



Mental Health (Care and Treatment) (Scotland) Act 2003

2003 asp 13

PART 18

MISCELLANEOUS

Cross-border transfer of patients

289 Cross-border transfer: patients subject to requirement other than detention

- (1) Regulations may make provision for or in connection with
- (a) [^{F1}the removal of a patient subject to a relevant requirement from Scotland to a place outwith Scotland (whether or not a place in the United Kingdom).]
 - [^{F2}(b) the reception in Scotland of
 - [a person subject to corresponding requirements in England, Wales, ^{F3}(i) Northern Ireland, the Isle of Man or the Channel Islands and removed from there.]
 - [^{F4}(ii) a person subject to corresponding requirements in a member State of the European Union (apart from the United Kingdom) and removed from that State.]
- (2) Where [^{F5}provision is made by regulations under paragraph (a) of subsection (1) above], the regulations shall—
- (a) require a patient's removal to be authorised by warrant issued by the patient's responsible medical officer;
 - (b) provide that a responsible medical officer may give that authority only—
 - (i) where the patient has notified the responsible medical officer of the patient's wish to be so removed; or
 - (ii) where, in the case where the patient is not capable of giving that notification, the patient's named person has notified the responsible medical officer that that person considers that it is in the patient's best interests to be so removed;
 - (c) provide that the responsible medical officer may give that authority only if satisfied that there are in existence, in the place to which the patient is to

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go after being so removed, arrangements which will secure for the patient measures, treatment, care or services corresponding or similar to those which the patient is subject to or is receiving by virtue of this Act or, as the case may be, the 1995 Act;

- (d) require a patient's responsible medical officer, before making a decision whether to authorise the removal of the patient, to notify—
 - (i) except where notification referred to in paragraph (b) above has been given by the patient's named person, that person;
 - (ii) the mental health officer; and
 - (iii) the Commission,
 of the circumstances of the case; and
- (e) authorise a patient's responsible medical officer to give directions in connection with the removal of the patient.

[^{F6}(2XA) Where provision is made by regulations under paragraph (a) of subsection (1) above, the regulations may make provision for exceptions to provisions included in them by virtue of subsection (2)(d).

(2YA) Where provision is made by regulations under paragraph (b) of subsection (1) above, the regulations shall provide for the reception of persons to take place only if—

- (a) the managers of a hospital consent to the reception; and
- (b) those managers undertake to appoint an approved medical practitioner to be the person's responsible medical officer.

(2ZA) Regulations under subsection (1) above may in particular—

- (a) make provision for things done under the law of a territory other than Scotland to be treated as things done under provisions of the law of Scotland,
- (b) confer powers and immunities on persons engaged in—
 - (i) escorting persons being moved under the regulations;
 - (ii) pursuing persons who have absconded while being so moved;
 - (iii) restraining persons who have absconded, or attempt to abscond, while being so moved;]
- (c) make provision amending provisions of this Act (other than this section) or any other enactment, or providing for any such provision or enactment to have effect with modification.

[^{F7}(2A) [^{F8}Subsections (2) to (2ZA) above are] without prejudice to the generality of the powers conferred by subsection (1) above.]

(3) References in this section to—

- (a)
- (b) a relevant requirement are, as respects a patient, references to a requirement imposed in relation to the patient under section 66(1) of this Act or section 57A(8) of the 1995 Act, not being detention in a hospital;

a patient subject to a relevant requirement include references to a patient in respect of whom section 128(1) (either as enacted or as applied by section 179 of this Act) is in operation.

[^{F9}(4) For the purposes of subsection (1)(b) above, a person is subject to “corresponding requirements” in a territory if under the law of that territory the person is subject to measures corresponding or similar to a requirement imposed in relation to a person

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under section 66(1) of this Act or section 57A(8) of the 1995 Act, not being detention in a hospital.]

Textual Amendments

- F1** Words in s. 289(1) renumbered as s. 289(1)(a) (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(1)(a)(i)**, 79(3); S.S.I. 2007/334, art. 2(a), sch. 1
- F2** S. 289(1)(b) inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(1)(a)(ii)**, 79(3); S.S.I. 2007/334, art. 2(a), sch. 1
- F3** Words in s. 289(1)(b) renumbered as s. 289(1)(b)(i) (5.5.2017 for specified purposes, 30.6.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 32(2)(a)**, 61(2); S.S.I. 2017/126, art. 2, sch.; S.S.I. 2017/197, art. 2, sch.
- F4** S. 289(1)(b)(ii) inserted (5.5.2017 for specified purposes, 30.6.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 32(2)(b)**, 61(2); S.S.I. 2017/126, art. 2, sch.; S.S.I. 2017/197, art. 2, sch.
- F5** Words in s. 289(2) substituted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(1)(b)**, 79(3); S.S.I. 2007/334, art. 2(a), sch. 1
- F6** S. 289(2XA)-(2ZA) inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(1)(c)**, 79(3); S.S.I. 2007/334, art. 2(a), sch. 1
- F7** S. 289(2A) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(9)**
- F8** Words in s. 289(2A) substituted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(1)(d)**, 79(3); S.S.I. 2007/334, art. 2(a), sch. 1
- F9** S. 289(4) inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(1)(e)**, 79(3); S.S.I. 2007/334, art. 2(a), sch. 1

Commencement Information

- I1** S. 289 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**
- I2** S. 289 in force at 5.10.2005 in so far as not already in force by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)