
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 467

MENTAL HEALTH

**The Mental Health (Cross border transfer:
patients subject to detention requirement or
otherwise in hospital) (Scotland) Regulations 2005**

Made - - - - *26th September 2005*

Coming into force - - *5th October 2005*

The Scottish Ministers, in exercise of the powers conferred by section 290 and 326 of the Mental Health (Care and Treatment) (Scotland) Act 2003(1), and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 326(4)(c) of that Act, been laid before and approved by resolution of the Scottish Parliament:

PART I
GENERAL

Citation, commencement, interpretation and extent

1.—(1) This Order may be cited as the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005 and shall come into force on 5th October 2005.

(2) In these regulations—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(2);

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003;

“detention in hospital authorised by virtue of the 2003 Act or the 1995 Act” shall be construed in accordance with section 290(7) of the 2003 Act;

“reception in Scotland” means—

- (a) in respect of person who was subject to relevant measures in a relevant territory immediately before leaving the relevant territory, the admission of the person to hospital in Scotland; and

(1) 2003 asp 13; see section 329 for the definition of “regulations”.

(2) 1995 c. 46.

(b) in respect of a patient who falls within regulation 30(3), the arrival of the person at the place in Scotland at which they are to reside,

and “received in Scotland” shall be interpreted accordingly;

“relevant measures” means corresponding measures as mentioned in section 290(8)(a) of the 2003 Act;

“relevant local authority” means—

(a) if the patient was living in Scotland at the time, the local authority for the area in which the patient was resident before being admitted to hospital; or

(b) if the patient was not resident in Scotland before being admitted to hospital the local authority for the area in which the hospital is situated;

“relevant territory” means—

(a) England and Wales,

(b) Northern Ireland,

(c) any of the Channel Islands, or

(d) the Isle of Man;

“responsible medical officer”, as it applies to a patient who falls within paragraph (2)(b) of regulation 2, means the medical practitioner who is primarily responsible for treating the patient while in hospital, and in all other cases it has the same meaning as in the 2003 Act;

“temporary compulsion order” means an order made under section 54(1)(c) of the 1995 Act;

“the receiving hospital” is the hospital mentioned in regulation 24(4)(f);

“the sending hospital” is the hospital mentioned in regulation 24(4)(e); and

“warrant for removal” means a warrant issued under regulation 10.

Application of Regulations

2.—(1) Subject to paragraph (4), Parts II and III of these Regulations apply to persons as provided for in paragraphs (2) and (3).

(2) Part II applies to—

(a) the removal, of a patient whose detention in hospital is authorised by virtue of the 2003 Act or the 1995 Act, from Scotland to a place outwith Scotland (whether or not a place in the United Kingdom); and

(b) the removal, of a patient who for the purposes of being given treatment for mental disorder is in hospital otherwise than by virtue of the 2003 Act or the 1995 Act, from Scotland to a place outwith the United Kingdom.

(3) Part III applies to the reception in Scotland of a person subject to relevant measures in a relevant territory and removed from there.

(4) Nothing in these Regulations authorises the removal from Scotland of a patient subject to—

(a) a treatment order;

(b) an assessment order;

(c) an interim compulsion order;

(d) a temporary compulsion order;

(e) remand for inquiry into the person’s mental condition under section 200(2)(b) of the 1995 Act,

or the reception in Scotland of a person subject to measures corresponding or similar to those referred to in this paragraph in a relevant territory.

PART II

REMOVAL OF PATIENTS FROM SCOTLAND

Responsible medical officer's duties where application for warrant for removal is to be made

3. If a patient's responsible medical officer considers that it may be appropriate to apply to the Scottish Ministers for a warrant for a patient's removal from Scotland to be issued under regulation 10, the responsible medical officer shall, as soon as practicable—

- (a) where the patient falls within paragraph (2)(b) of regulation 2, inform the relevant local authority to enable a mental health officer to be designated in accordance with section 229 of the 2003 Act as modified by regulation 4; and
- (b) consult—
 - (i) the patient's mental health officer; and
 - (ii) such persons as the responsible medical officer considers appropriate.

Designation of mental health officer responsible for patient's case

4. Section 229 of the 2003 Act shall apply where the relevant local authority receives notice in terms of regulation 3 subject to the following modifications—

- (a) in subsection (1)(a) for the words “a relevant event occurs in respect of a patient” substitute “receiving notice in terms of regulation 3(a) of the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005”;
- (b) omit subsection (1)(b); and
- (c) for subsection (3) substitute—

“(3) In this section, “relevant local authority” has the same meaning as in the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005.”.

Responsible medical officer: notification of proposed application

5.—(1) If, having regard to any views expressed by persons consulted under regulation 3(b), it continues to appear to the responsible medical officer that the patient should be removed from Scotland, the responsible medical officer shall, as soon as practicable, give notice that an application is to be made for a warrant for removal of that patient to—

- (a) the patient;
- (b) (i) the patient's named person; or
 - (ii) where the patient falls within paragraph (2)(b) of regulation 2, the patient's primary carer;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient; and
- (e) the mental health officer,

and shall afford those persons the opportunity to make representations on the proposed removal to the responsible medical officer within 7 days of the day on which notice was given.

(2) Notice to the patient under paragraph (1)(a), shall also require the patient to give notice to the Scottish Ministers of any wish or preference of that patient as to the proposed removal from Scotland, within 7 days of the day on which notice was given.

Mental health officer's duties where application for warrant for removal is to be made

6.—(1) The mental health officer shall, as soon as practicable after being notified under regulation 5, and, in any event, within 7 days of the day on which notice was given, comply with the requirements in paragraph (2).

(2) Those requirements are—

- (a) to interview the patient;
- (b) to inform the patient of the patient's rights in relation to such an application;
- (c) to inform the patient of the availability of independent advocacy services under section 259 of the 2003 Act;
- (d) to take appropriate steps to ensure that the patient has the opportunity of making use of those services; and
- (e) to inform the patient's responsible medical officer—
 - (i) of whether the mental health officer agrees, or disagrees, that the application that is proposed should be made;
 - (ii) if the mental health officer disagrees, of the reason why that is the case; and
 - (iii) of any other matters that the mental health officer considers relevant.

Warrant for removal: application by responsible medical officer

7.—(1) If, having regard to—

- (a) any representations made by persons notified under regulation 5(1);
- (b) any views expressed by the mental health officer under regulation 6(2)(e),

the responsible medical officer is satisfied that an application should be made to the Scottish Ministers for a warrant for removal of the patient from Scotland, such application may be made under this regulation.

(2) An application under this regulation by the responsible medical officer shall state—

- (a) the name and address of the patient;
- (b) the name and address of the patient's named person; or
- (c) where the patient falls within paragraph (2)(b) of regulation 2, the name and address of the patient's primary carer;
- (d) the reason for making the application;
- (e) the arrangements for treatment, care or services which would be available for the patient in the place to which it is proposed that the patient is to go after being removed from Scotland;
- (f) whether the mental health officer agrees, or disagrees with the application, and if the mental health officer disagrees, the reasons for the disagreement;
- (g) whether the persons notified under regulation 5 made any representations on the proposed removal and the nature of those representations; and
- (h) any other matters that the responsible medical officer considers relevant.

Information and factors to be considered in respect of an application for a warrant for removal

8.—(1) When deciding whether to authorise the removal of a patient from Scotland, the Scottish Ministers shall consider the information provided by the responsible medical officer in the application, and any notice given by the patient as required by regulation 5(2).

(2) In making their decision, the Scottish Ministers shall have regard to the following factors—

- (a) the best interests of the patient;
- (b) the existence, in the place to which a patient is to go after being removed from Scotland, of arrangements which will secure for the patient—
 - (i) in the case of paragraph (2)(a) of regulation 2, measures, treatment, care or services corresponding or similar to those to which the patient is subject or is receiving by virtue of the 2003 Act or, as the case may be, the 1995 Act; or
 - (ii) in the case of paragraph (2)(b) of regulation 2, treatment for mental disorder corresponding or similar to that which the patient is receiving in hospital;
- (c) any wish or preference as to the patient's removal from Scotland of which the patient has given notice to the Scottish Ministers; and
- (d) any risk to the safety of any person.

(3) Where the Scottish Ministers are not satisfied that they have sufficient information to enable them to make a decision, they may request such further information from the responsible medical officer as they think fit.

Notification of the decision

9.—(1) Where the Scottish Ministers decide under regulation 8 that a patient be removed from Scotland, they shall immediately give notice of that decision to—

- (a) the patient;
- (b) the patient's named person;
- (c) the responsible medical officer;
- (d) the mental health officer;
- (e) the Commission; and
- (f) the country or territory to which it is proposed that the patient should be removed.

(2) Notice to the patient under paragraph (1)(a) shall include information as to the patient's rights of appeal under regulation 13 against the Scottish Ministers' decision.

Warrant for removal

10.—(1) Subject to paragraph (2), where the Scottish Ministers decide that a patient be removed from Scotland they shall issue a warrant for removal which shall authorise that patient's removal from Scotland.

(2) No warrant for removal shall be issued by the Scottish Ministers, until any consent required in the country or territory to which it is proposed that the patient should be removed has been obtained.

(3) In issuing a warrant for removal, the Scottish Ministers may—

- (a) give directions for the patient's conveyance to the patient's destination on removal from Scotland;

- (b) arrange for the patient’s responsible medical officer or the managers of the hospital in Scotland where the patient is currently being detained or otherwise being given treatment, to give any such directions; or
 - (c) do both (a) and (b).
- (4) The warrant for removal shall specify an effective date for the patient’s removal and, subject to regulation 11, a warrant issued under this regulation will only authorise removal of the patient within 14 days from the effective date.
- (5) In issuing the warrant for removal, the Scottish Ministers shall immediately send a copy of the warrant to–
- (a) the patient;
 - (b) the patient’s named person;
 - (c) the responsible medical officer;
 - (d) the mental health officer;
 - (e) the Commission; and
 - (f) the country or territory to which it is proposed that the patient should be removed.
- (6) In this regulation “effective date” is a date specified by the Scottish Ministers in the warrant as the date on or after which the removal is authorised to take place and, subject to paragraph (7), shall be–
- (a) in a case where removal is to a place in the United Kingdom, not sooner than 7 days before the date proposed for the patient’s removal; or
 - (b) in a case where removal is to a place outwith the United Kingdom, not sooner than 28 days before the date proposed for the patient’s removal.
- (7) The Scottish Ministers may, where–
- (a) the patient consents to the removal, waive; or
 - (b) it is considered necessary that the patient be removed urgently and the requirements of paragraph (9) have been complied with, shorten in accordance with paragraph (10),
- the period mentioned in paragraph (6).
- (8) Where paragraph (7)(a) applies the Scottish Ministers shall–
- (a) specify the effective date as a date not sooner than 3 working days before the date proposed for the patient’s removal; and
 - (b) at least 3 working days before the date proposed for the patient’s removal, notify the Commission that the patient consents.
- (9) The requirements referred to in paragraph (7)(b) are that–
- (a) the Scottish Ministers have consulted the Commission as to whether it is necessary that the patient be removed urgently; and
 - (b) the Commission has agreed that the removal must take place urgently.
- (10) Where paragraph (7)(b) applies the period mentioned in paragraph (6) shall be–
- (a) in a case where removal is to a place in the United Kingdom, not sooner than 3 working days before the date proposed for the patient’s removal; and
 - (b) in a case where removal is to a place outwith the United Kingdom, not sooner than 7 days before the date proposed for the patient’s removal.
- (11) In this regulation “working day” means a day which is not–
- (a) Saturday;

- (b) Sunday; or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽³⁾.

Suspension of effect of warrant

11.—(1) Where an appeal in respect of a proposed removal is made to—

- (a) the Tribunal under regulation 13(1);
- (b) the sheriff principal under section 320 of the 2003 Act⁽⁴⁾, as applied by these regulations; or
- (c) the Court of Session under section 321 or 322 of that Act, as applied by these regulations,

the effect of any warrant issued shall be suspended and the removal shall not take place pending the determination of the appeal.

(2) Where a reference is made by the Commission to the Tribunal under regulation 17, the effect of any warrant issued shall be suspended and the removal shall not take place pending the determination of the reference.

(3) On the determination of an appeal or reference, the Scottish Ministers may vary or re-issue any warrant as may be necessary to give effect to such determination and to enable the patient's removal to take place.

Patients subject to conditional discharge

12.—(1) A patient falls within this regulation if the patient—

- (a) is subject to a restriction order;
- (b) has been conditionally discharged under section 193(7) of the 2003 Act and not recalled under section 202 of that Act.

(2) Where responsibility for such a patient is transferred under this regulation, the patient shall be treated as if on the date of removal—

- (a) the patient were subject to a restriction order under the most closely corresponding enactment in force in that country or territory; and
- (b) the patient had been conditionally discharged under the most closely corresponding enactment in force in that country or territory.

Appeal to Tribunal

13.—(1) Where notice is given under regulation 9(1), the patient may, during the period beginning with the day on which notice is given and the patient's removal from Scotland, appeal to the Tribunal against the proposed removal.

(2) On an appeal under paragraph (1) the Tribunal may make or refuse to make an order that the proposed removal shall not take place.

Appeals to the sheriff principal and Court of Session against certain decisions

14.—(1) Subject to the modifications in paragraphs (2) and (3), where the patient is subject to—

- (a) a short term detention certificate;
- (b) an interim compulsory treatment order;

⁽³⁾ 1971 c. 80.

⁽⁴⁾ 2003 asp 13.

- (c) a compulsory treatment order; or
- (d) a compulsion order without a restriction order,

sections 320 and 321 of the 2003 Act apply to decisions of the Tribunal to make or refuse to make an order under regulation 12(2) as they apply to decisions of the Tribunal to make or refuse to make such an order under section 125(5) or 126(5) of the 2003 Act.

- (2) In section 320(5)–
 - (a) omit paragraphs (b) to (d); and
 - (b) at the end insert “the Scottish Ministers.”.

(3) In section 321(2) after the words “this Act”, add “as modified by the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005.”.

Appeal to the Court of Session against certain decisions of the Tribunal

- 15.**—(1) Subject to the modifications in paragraph (2), where the patient is subject to–
- (a) a compulsion order and restriction order;
 - (b) a hospital direction;
 - (c) a transfer for treatment direction,

section 322 of the 2003 Act applies to decisions of the Tribunal to make or refuse to make an order under regulation 13(2) as it applies to decisions of the Tribunal to make or refuse to make such an order under section 219(5) or 220(5) of the 2003 Act.

- (2) In section 322(3)–
 - (a) omit paragraphs (b) to (d);
 - (b) omit “and”; and
 - (c) after “Scottish Ministers” insert–
 - “,
 - (f) the patient’s mental health officer; and
 - (g) the patient’s responsible medical officer.”.

Delay of removal pending further appeal

16. Where on appeal, the Tribunal, or, as the case may be the sheriff principal refuses to make an order that the proposed removal shall not take place, the proposed removal shall not take place within 21 days of the decision, except where the patient consents in writing to the removal.

Reference to Tribunal by Commission

17.—(1) Where notice is given to the Commission under regulation 9(1) and it appears to the Commission that it is appropriate to do so, it may during the period beginning with the day on which notice is given and the patient’s removal from Scotland, make a reference to the Tribunal in respect of the proposed removal.

- (2) On making a reference under paragraph (1), the Commission shall, give notice of the reference to–
 - (a) the patient;
 - (b) the patient’s named person; or
 - (c) where the patient falls within paragraph (2)(b) of regulation 2, the patient’s primary carer;

- (d) any guardian of the patient;
 - (e) any welfare attorney of the patient;
 - (f) the mental health officer;
 - (g) the responsible medical officer; and
 - (h) the Scottish Ministers.
- (3) A reference under paragraph (1) must state—
- (a) the name and address of the patient;
 - (b) the name and address of the patient’s named person; and
 - (c) the reason for making the reference.

Powers of the Tribunal on reference

18.—(1) Where a reference is made under regulation 17, the Tribunal may make or refuse to make an order that the proposed removal shall not take place.

(2) Before making or refusing to make an order under paragraph (1), the Tribunal shall allow the persons mentioned in paragraph (3) the opportunity—

- (a) of making representations (whether orally or in writing); and
- (b) of leading, or producing, evidence.

(3) Those persons are—

- (a) the patient;
- (b) the patient’s named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the mental health officer;
- (f) the patient’s responsible medical officer;
- (g) the patient’s primary carer;
- (h) any curator *ad litem* appointed in respect of the patient by the Tribunal; and
- (i) any other person appearing to the Tribunal to have an interest in the proposed removal.

Exclusion of appeal or reference: post removal

19. No appeal nor reference by the Commission under or by virtue of these regulations will be competent after the removal has taken place, provided the removal is carried out in accordance with the provisions of these Regulations.

Notification requirements: post removal

20.—(1) Subject to paragraph (3) where the patient is removed from Scotland under this Part of these Regulations, the managers of the hospital from which the patient is removed shall, before the expiry of the period of 7 days beginning with the date of removal, give notice to the patient’s mental health officer and the Commission of the matters mentioned in paragraph (2).

(2) Those matters are—

- (a) the date of removal; and
- (b) the name and address of the hospital to which the patient was removed; or

(c) where the patient falls within regulation 12(1), the address of the place where the patient, after removal, is to reside.

(3) Where the patient was, prior to removal subject to one of the orders listed in regulation 14(1) those managers of the hospital shall, in addition, give notice to the Scottish Ministers in like manner as is required by paragraph (1).

Escorts from other territories: powers

21.—(1) This regulation applies to persons from a country or territory to which the patient is being removed from Scotland, who are—

- (a) authorised to escort patients in that country or territory under the law of that country or territory; and
- (b) authorised to escort the patient from Scotland by virtue of directions given in accordance with regulation 10(3).

(2) Persons referred to in paragraph (1) will have the same powers in respect of the patient they are escorting, while in Scotland, as persons otherwise authorised to escort patients under or by virtue of the 2003 Act.

Absconding

22.—(1) Paragraph (4) applies if—

- (a) a warrant for removal of the patient has been issued under regulation 10; and
- (b) the patient falls within paragraph (2) or (3).

(2) A patient falls within this paragraph if while being conveyed to or travelling to the country or territory to which the patient is being removed, the patient absconds.

(3) A patient falls within this paragraph if the patient—

- (a) is being conveyed to or is travelling in, the country or territory to which the patient is being removed, but has not yet reached their destination;
- (b) absconds before the measure which authorised the patient’s detention in hospital in Scotland ceases to have effect by virtue of regulation 23; and
- (c) returns to Scotland.

(4) Sections 301 to 303 and regulations under section 310 of the 2003 Act will apply to the patient subject to the modifications in paragraphs (5) and (6).

(5) In section 301—

- (a) in subsection (1)(a)(ii) omit the word “or”;
- (b) in subsection (1)(b) after the word “absconds” insert—

“; or

- (c) while being removed from Scotland by virtue of regulations made under section 290 of this Act, absconds.”.

(6) In section 302, for subsection (2) substitute—

“(2) A patient to whom this subsection applies and who absconds while being removed from Scotland to any place by virtue of regulations made under section 290 of this Act is liable to be taken in to custody and dealt with in accordance with section 303 of this Act.”.

Cessation of measures

23. Where a patient whose detention in hospital is authorised by virtue of the 2003 Act or the 1995 Act is removed from Scotland in pursuance of arrangements under this Part of these Regulations the measure which authorised the patient's detention in hospital in Scotland shall cease to have effect when the patient becomes subject to relevant measures in the country or territory to which the patient is removed.

PART III

RECEPTION OF PERSONS IN SCOTLAND

Reception in Scotland: consent

24.—(1) This regulation applies where it is proposed that a person (referred to in this Part as a “patient”) who is subject to relevant measures in a relevant territory will be received in Scotland.

(2) No such patient will be received in Scotland without the consent of the Scottish Ministers.

(3) The Scottish Ministers will consider a request for consent to the reception of such a patient where—

- (a) the request is made in pursuance of provisions having effect in a relevant country or territory; and
- (b) the request contains the information set out in paragraph (4).

(4) The information referred to in paragraph (3) is—

- (a) the name and address of the patient;
- (b) the name and address of the patient's nearest relative or primary carer, if any;
- (c) the type (or types) of mental disorder that the patient has (by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of the 2003 Act (meaning of “mental disorder”));
- (d) details of the relevant measures to which the patient is currently subject;
- (e) the name and address of the hospital in the relevant territory in which the patient is presently detained or liable to be detained;
- (f) the name and address of the hospital in Scotland in which it is proposed the patient will be detained or liable to be detained;
- (g) where the patient when transferred will fall within regulation 30(3), the address of the place where the patient is to reside in Scotland;
- (h) the date on which it is proposed that the transfer will take place;
- (i) confirmation that arrangements have been made for admitting the patient to the receiving hospital; and
- (j) the name and other appropriate contact details of the approved medical practitioner who it is anticipated will become the patient's responsible medical officer.

(5) The Scottish Ministers shall, as soon as practicable—

- (a) consider the request; and
- (b) give notice to the managers of both the sending hospital and the receiving hospital informing them whether the Scottish Ministers consent to the reception in Scotland of the patient.

Directions

25. Where the Scottish Ministers consent to the reception in Scotland of a patient in accordance with regulation 24, they shall consider whether any directions for the patient's conveyance to their destination in Scotland have been given by the person or authority exercising corresponding functions in a relevant territory, and may—

- (a) give any directions or further directions as they think fit;
- (b) arrange for the patient's responsible medical officer, appointed by virtue of regulation 29 or the managers of the receiving hospital to give such directions; or
- (c) do both (a) and (b).

Application of regulations 27 to 29

26. Regulations 27 to 29 apply if the managers of the receiving hospital—

- (a) are given notice in accordance with regulation 24(5) that the Scottish Ministers consent to the reception in Scotland of the patient; and
- (b) receive notice from the managers of the sending hospital that the transfer is to proceed and the patient received in Scotland.

Notification to relevant local authority

27.—(1) As soon as reasonably practicable after receiving notice given in accordance with regulation 26(b) the managers of the receiving hospital shall give notice to the relevant local authority of the matters mentioned in paragraph (2).

(2) Those matters are—

- (a) the name of the patient;
- (b) the name and address of the receiving hospital;
- (c) the measure under the 2003 Act or the 1995 Act to which the patient will be treated as if they are subject by virtue of regulation 30(1); and
- (d) the date on which the patient is expected to be received in Scotland.

Designation of mental health officer responsible for patient's case

28. Section 229 of the 2003 Act shall apply in relation to any patient in respect of whom notice is given under regulation 27 subject to the following modifications—

- (a) in subsection (1)(a) for the words “a relevant event occurs in respect of a patient” substitute “receiving notice in accordance with regulation 27 of the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005”; and
- (b) in subsection (3)(a) for “resides” substitute “is to reside”.

Appointment of responsible medical officer

29. Section 230 of the 2003 Act shall apply in relation to any patient in respect of whom notice is given under regulation 26(b), subject to the modification that, in subsection (4)—

- (a) in the definition of “appropriate act” at the end insert—
 - “(g) the receiving of notice given in accordance with regulation 26(b) of the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005.”;

- (b) in the definition of “relevant managers” at the end insert—
 - “(e) in a case where the appropriate act falls within paragraph (g) of that definition, the managers of the receiving hospital.”.

Reception in Scotland: general

30.—(1) A patient, who is subject to relevant measures in a relevant territory and, who is received in Scotland, shall be treated once so received—

- (a) as if their detention in hospital had been authorised by virtue of a measure under the 2003 Act⁽⁵⁾ or the 1995 Act⁽⁶⁾ which most closely corresponds or is most similar to the measure to which the patient was subject immediately before the transfer took place; and
- (b) where the patient was subject to a measure under any enactment in force in that territory restricting their discharge immediately before the transfer took place, as if the patient was subject to the measure under the 2003 Act or the 1995 Act which most closely corresponds to the measure under the enactment restricting their discharge to which the patient was subject.

(2) Without prejudice to paragraph (1), where the relevant authority transfers responsibility for a patient who falls within paragraph (3) to the Scottish Ministers the patient shall be treated—

- (a) as if the patient was subject to a restriction order; and
- (b) as if on the date of the transfer the patient had been conditionally discharged under section 193(7) of the 2003 Act and not recalled under section 202 of that Act.

(3) A patient falls within this paragraph if, immediately before their transfer from the relevant territory, the patient—

- (a) was subject to measure in a relevant territory corresponding or similar to a restriction order; and
- (b) had been conditionally discharged under the most closely corresponding enactment in force in the relevant territory.

(4) Where a patient to whom paragraph (1) applies was, immediately before their transfer from the relevant territory, liable to be detained by virtue of a measure corresponding or similar to a transfer for treatment direction or a hospital direction made while serving, or in connection with, a sentence of imprisonment imposed by a court in the relevant territory the patient shall be treated as if the sentence had been imposed by a court in Scotland.

(5) Subject to paragraph (6), the measure to which a patient becomes treated as if they are subject by virtue of paragraph (1) shall have effect, including for the purpose of calculation of time limits imposed by the 2003 Act or the 1995 Act, as if that measure had been made or given on the date on which the relevant measure to which the patient was subject, immediately before their transfer from the relevant territory, first had effect.

(6) Paragraph (5) does not apply to time limits which are specifically provided for or otherwise amended by these regulations.

(7) In this section “the relevant authority” means the person or authority exercising corresponding functions in the relevant territory to those exercised by the Scottish Ministers under section 202 of the 2003 Act.

(5) 2003 asp 13.
(6) 1995 c. 46.

Powers of escorts

31.—(1) Where a patient is being escorted to Scotland, by virtue of directions given by regulation 25, from the time when the patient enters Scotland until the patient reaches their destination, the persons escorting the patient (the escorts) will have the powers set out in paragraphs (2) and (3).

(2) Those powers are—

- (a) where the patient is being escorted to their destination in Scotland by escorts authorised in the relevant territory under the law of that territory, the same powers in respect of the patient as they had in the relevant territory;
- (b) where the patient is being escorted to their destination in Scotland by escorts authorised under or by virtue of the 2003 Act, the same powers to escort the patient as they would have if the patient was subject to the measure under the 2003 Act or the 1995 Act to which they will be treated as if they are subject by virtue of regulation 30;
- (c) without prejudice to subparagraph (a) where the patient absconds from the custody of escorts mentioned in that subparagraph, to immediately pursue and resume the custody of the person; and
- (d) without prejudice to subparagraph (a) to restrain the patient if the patient has absconded, or attempted to abscond while being so escorted.

(3) The powers conferred by paragraph (2)(c) and (d) include the power to use reasonable force in their exercise.

Absconding

32.—(1) Without prejudice to the powers of an escort under regulation 31, a patient who, while being escorted to their destination in Scotland, absconds within Scotland, will be liable to be taken into custody by a person specified in paragraph (3).

(2) Where a patient is taken in to custody under paragraph (1), the specified person may—

- (a) return the patient to the custody of the escorts from whose charge the patient absconded; or, if that is not practicable;
- (b) take the patient to the receiving hospital or any other place considered appropriate by the patient's responsible medical officer.

(3) The persons referred to in paragraph (1) are—

- (a) a mental health officer;
- (b) a constable;
- (c) a member of staff of any hospital; and
- (d) any other person authorised for the purposes by the patient's responsible medical officer.

Patients subject to compulsory treatment order

33. Where by virtue of regulation 30 a patient is treated as if they are subject to a compulsory treatment order or an interim compulsory treatment order the measures thereby authorised are—

- (a) the detention of the patient in the receiving hospital; and
- (b) the giving to the patient in accordance with Part 16 of the 2003 Act of medical treatment.

Persons subject to compulsion order

34. Where by virtue of regulation 30 a patient is treated as if they are subject to a compulsion order the measures thereby authorised are—

- (a) the detention of the patient in the receiving hospital; and
- (b) the giving to the patient in accordance with Part 16 of the 2003 Act of medical treatment.

Mental health officer's duties

35.—(1) The mental health officer shall, as soon as practicable after being designated as the mental health officer having responsibility for the patient's case, in accordance with section 229 of the 2003 Act as applied by regulation 28, comply with the requirements in paragraph (2).

(2) Those requirements are—

- (a) to take such steps as are reasonably practicable to establish whether the patient has a named person;
- (b) to notify the patient's responsible medical officer of the name and address of any named person;
- (c) to comply with the requirements of section 231 of the 2003 Act subject to the modification that, in subsection (1) for the words "where a relevant event occurs in respect of a patient" substitute "patient is received in Scotland under the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005;
- (d) to inform the patient of the availability of independent advocacy services under section 259 of the 2003 Act; and
- (e) to take appropriate steps to ensure that the patient has the opportunity of making use of those services.

Assessment of patient: post transfer

36.—(1) The patient's responsible medical officer shall within 7 days of the patient's reception in Scotland carry out an assessment of the patient in accordance with the requirements of paragraph (2).

(2) Those requirements are—

- (a) to carry out a medical examination of the patient; or
- (b) to make arrangements for an approved medical practitioner to carry out such an examination;
- (c) to consult and have regard to the views of the patient's mental health officer designated under regulation 28; and
- (d) to consider—
 - (i) whether the conditions in paragraph (4) apply in respect of the patient; and
 - (ii) whether, subject to paragraph (5), it continues to be necessary for the patient to be subject to the measures authorised by the 2003 Act or the 1995 Act to which the patient became treated as if they were subject by virtue of regulation 30.

(3) Where a medical examination is carried out under paragraph (2), there must not be a conflict of interest in relation to the medical examination.

(4) The conditions referred to in paragraph (2)(d)(i) are—

- (a) where the patient has, by virtue of regulation 30 become treated as if they are subject to one of the orders or directions listed in paragraph (6)—

- (i) that the patient has a mental disorder;
- (ii) that medical treatment which would be likely to—
 - (aa) prevent the mental disorder worsening; or
 - (bb) alleviate any of the symptoms, or effects, of the disorder,
 is available for the patient; and
- (iii) that if the patient were not provided with such medical treatment there would be a significant risk—
 - (aa) to the health, safety or welfare of the patient; or
 - (bb) to the safety of any other person;
- (b) where the patient has, by virtue of regulation 30 become treated as if they are subject to an emergency detention certificate or to a short term detention certificate, the conditions are—
 - (i) that the patient has a mental disorder;
 - (ii) that because of the mental disorder, the patient’s ability to make decisions about the provision of medical treatment is significantly impaired; and
 - (iii) that if the patient were not detained in hospital there would be a significant risk—
 - (aa) to the health, safety or welfare of the patient; or
 - (bb) to the safety of any other person;
- (c) where the patient has, by virtue of regulation 30 become treated as if they are subject to an interim compulsory treatment order or a compulsory treatment order the conditions are—
 - (i) that the patient has a mental disorder;
 - (ii) that medical treatment which would be likely to—
 - (aa) prevent the mental disorder worsening; or
 - (bb) alleviate any of the symptoms, or effects, of the disorder,
 is available for the patient;
 - (iii) that if the patient were not provided with such medical treatment there would be a significant risk—
 - (aa) to the health, safety or welfare of the patient; or
 - (bb) to the safety of any other person; and
 - (iv) that because of the mental disorder the patient’s ability to make decisions about the provision of such medical treatment is significantly impaired.
- (5) Where the patient has by virtue of regulation 30 become treated as if they are subject to—
 - (a) a compulsion order and restriction order;
 - (b) a hospital direction;
 - (c) a transfer for treatment direction,

in addition to matters specified in paragraph (2)(d)(ii) the responsible medical officer shall also consider whether, as a result of the patient’s mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment.

- (6) The orders and directions referred to in paragraph (4)(a) are—
 - (a) a compulsion order;
 - (b) a compulsion order and a restriction order;
 - (c) a hospital direction; and

(d) a transfer for treatment direction.

(7) For the purposes of this regulation, the circumstances where there is to be taken to be a conflict of interest are those circumstances specified in the Mental Health (Conflict of Interest) (Scotland) (No. 2) Regulations 2005(7).

Responsible medical officer's duty to revoke: emergency detention certificate and short term detention certificate

37.—(1) This regulation applies in respect of a patient who has become treated as if they are subject to an emergency detention certificate or a short-term detention certificate by virtue of regulation 30.

(2) If having carried out the assessment required by regulation 36(1) the patient's responsible medical officer is not satisfied that—

- (a) the conditions mentioned in regulation 36(4)(b) continue to be met in respect of the patient; or
- (b) that it continues to be necessary for the detention in hospital of the patient to be authorised by the certificate,

the responsible medical officer shall revoke the certificate.

Responsible medical officer's duty to revoke: interim compulsory treatment order, compulsory treatment order and compulsion order

38.—(1) This regulation applies in respect of a patient who has become treated as if they are subject to an interim compulsory treatment order, a compulsory treatment order or a compulsion order by virtue of regulation 30.

(2) If having carried out the assessment required by regulation 36(1) the patient's responsible medical officer is not satisfied that—

- (a) the conditions mentioned in regulation 36(4)(c) continue to be met in respect of the patient; or
- (b) that it continues to be necessary for the patient to be subject to the order,

the responsible medical officer shall make a determination revoking the order.

(3) A determination under this regulation will be made as soon as practicable after the duty to make it arises.

Responsible medical officer's report and recommendation following assessment: compulsion order and restriction order

39.—(1) Subject to the modifications in paragraph (2), section 183 of the 2003 Act shall have effect in respect of a patient who has become treated as if they are subject to a compulsion order and a restriction order by virtue of regulation 30.

(2) The modifications referred to are—

- (a) in subsection (1), after "Act" insert "or an assessment under regulation 36(1) of the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005";
- (b) in subsection (2), after "review" insert "or assessment";
- (c) in subsections (3)(a), (6)(a)(i) and (7)(a)(i), after "Act" insert "or regulation 36(4)(a) of those Regulations"; and

- (d) in subsection (5)(b)(ii) after “Act” insert “paragraph (4)(a)(ii) and (iii) of regulation 36 of those Regulations”.

Responsible medical officer’s report and recommendation following assessment: hospital direction and transfer for treatment direction

40.—(1) Subject to the modifications in paragraph (2), section 207 of the 2003 Act shall have effect in respect of a patient who has become treated as if they are subject to a compulsion order and a restriction order by virtue of regulation 30.

(2) The modifications referred to are—

- (a) in subsection (1), after “Act” insert “or an assessment under regulation 36(1) of the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005”;
- (b) in subsection (2), after “review” insert “or assessment”;
- (c) in subsection (3)(a), after “Act” insert “or regulation 36(4)(a) of those Regulations”;
- (d) in subsection (4)—
- (i) after “by” insert—
- “_”;
- (a)
- (ii) after “Act” insert—
- “; or
- (b) the mental health officer consulted under regulation 36(2) of those regulations,”;
- (e) in subsection (5) for “persons consulted under section 206(3)(c)” substitute “the person referred to in subsection (4)(a) and (b)”;
- (f) in subsection (5)(b)(ii) after “Act” insert “or paragraph (4)(a)(ii) and (iii) of regulation 36 of those Regulations”.

Notification requirements: post assessment

41.—(1) Where a patient is received in Scotland the patient’s responsible medical officer shall, within the appropriate period, prepare and send to the managers of the receiving hospital a report stating—

- (a) whether the relevant conditions apply in respect of the patient;
- (b) (by reference to appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of the 2003 Act) the type (or types) of mental disorder that the patient has; and
- (c) whether it is necessary for the patient to be subject to the measures authorised by the 2003 Act or the 1995 Act to which the patient became treated as if they were subject by virtue of regulation 30.

(2) The managers of the receiving hospital shall within the appropriate period notify the parties listed in paragraph (3) of the following matters, where relevant—

- (a) the name and address of the sending hospital;
- (b) the name and address of the receiving hospital;
- (c) the date on which the transfer took place;
- (d) the name and other appropriate contact details of the patient’s responsible medical officer;

- (e) whether following assessment carried out in accordance with regulation 36(2), the responsible medical officer is satisfied that the relevant conditions apply in respect of the patient;
 - (f) whether it is necessary for the patient to be subject to the measures authorised by the 2003 Act or the 1995 Act to which the patient became treated as if they were subject by virtue of regulation 30;
 - (g) the date on which authorisation of detention of the patient under the 2003 Act or, as the case may be, the 1995 Act ceased (whether by revocation or otherwise) or, will cease unless otherwise extended; and
 - (h) where the patient is subject to a compulsory treatment order or, as the case may be, a compulsion order the period during which the next mandatory review of the order is to take place.
- (3) The parties referred to in paragraph (2) are—
- (a) the patient;
 - (b) the patient’s named person;
 - (c) the Commission;
 - (d) where the patient became treated as if they were subject to a compulsory treatment order or, as the case may be, a compulsion order, the Tribunal;
 - (e) where the patient became treated as if they were subject to an order or direction listed in paragraph (4), the Scottish Ministers; and
 - (f) the mental health officer designated under regulation 28.
- (4) The orders and directions mentioned in paragraph (3)(e) are—
- (a) a compulsion order and a restriction order;
 - (b) a hospital direction; or
 - (c) a transfer for treatment direction.
- (5) For the purposes of this regulation—
- (a) the “appropriate period” is as soon as practicable and in any event within 14 days of the date on which the patient was received in Scotland; and
 - (b) “relevant conditions” are the conditions set out in regulation 36(4).

Preparation of a care plan

42.—(1) Paragraphs (2) and (3) shall apply in respect of the preparation of care plans for patients received in Scotland.

(2) Where, by virtue of regulation 30, the patient has become treated as if they are subject to a compulsory treatment order, section 76 of the 2003 Act⁽⁸⁾ shall have effect subject to the modification that in subsection (1) for the words “a patient’s responsible medical officer is appointed under section 230 of this Act” substitute “the date on which the patient was assessed in accordance with regulation 36 of the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005, and, in any event, within 28 days of that date”.

(3) Where, by virtue of regulation 30, the patient has become treated as if they are subject to a compulsion order section 137 of the 2003 Act shall have effect subject to the following modifications.

(8) 2003 asp 13.

(a) for subsection (1) substitute–

“This section applies where a patient is treated as if they are subject to a compulsion order by virtue of regulation 30 of the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005.”; and

(b) in subsection (2), for the words “a patient’s responsible medical officer is appointed under section 230 of this Act” substitute–

“the date on which the patient was assessed in accordance with regulation 36 of those Regulations and, in any event, within 28 days of that date”.

Provision of information to patient

43. Section 260 of the 2003 Act shall have effect with respect to patients received in Scotland subject to the modification that in subsection (3)(a)(i) for the words–

“the beginning of such detention” substitute “the patient is received in Scotland under the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005”.

Provision of assistance to patient with communication difficulties

44. Section 261 of the Act shall have effect with respect to patients received in Scotland subject to the modification that for paragraph (a) of subsection (3) substitute–

“(a) any assessment, including medical examination, carried out under regulation 36 of the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005.”.

Visits to patients: duty on Commission

45. The Commission shall secure that an authorised person (within the meaning of section 14 of the Act) visits each patient received in Scotland within 6 months from the date on which the patient is so received.

Future treatment of patient

46.—(1) Subject to paragraph (2), and the other specific modifications made by these Regulations, the 2003 Act or, as the case may be, the 1995 Act shall apply to patients received in Scotland as they apply to patients whose treatment commenced in Scotland.

(2) Where the assessment carried out under regulation 36 takes place during the specified period in respect of the sections of the 2003 Act listed in paragraph (3) the review required by those sections need not take place.

(3) The sections referred to in paragraph (2) are–

- (a) section 77(2) (first mandatory review);
- (b) section 78(2) (further mandatory reviews);
- (c) section 139(2) (first review of compulsion order);
- (d) section 140(2) (further reviews of compulsion order);
- (e) section 182(2) (review of compulsion order and a restriction order); and
- (f) section 206(2) (review of hospital direction and transfer for treatment direction).

(4) In this regulation the “specified period” means the period specified in the sections listed in paragraph (3).

St Andrew's House, Edinburgh
26th September 2005

LEWIS MACDONALD
Authorised to sign by the Scottish Ministers

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) provides for the transfer of patients subject to a detention requirement or otherwise in hospital from Scotland and for patients subject to corresponding measures in England, Wales, Northern Ireland, the Isle of Man or the Channel Islands to be received in Scotland. These Regulations make provision for those transfers to take place.

Regulation 2 provides that Part II of the Regulations applies to removals from Scotland of patients who are in hospital for treatment for mental disorder either by virtue of the 2003 Act or of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) or otherwise, and Part III to the reception of patients in Scotland. The Regulations do not apply to those patients who are subject to ongoing criminal proceedings in Scotland or to corresponding proceedings in another jurisdiction.

Regulation 3 makes provision for consultation where a patient’s responsible medical officer is considering making an application for a warrant for removal of a patient from Scotland, and in the case of a patient who is not being treated by virtue of the 2003 Act or the 1995 Act, for notification to the relevant local authority to enable a mental health officer to be designated as responsible for the patient’s case.

Regulation 4 provides for the designation by a local authority of a mental health officer for the patient concerned.

Regulation 5 requires the responsible medical officer to notify specified persons that an application is to be made to enable those persons to make representations and to advise the patient of the need to give notice to the Scottish Ministers of their wish or preference concerning the proposed removal.

Regulation 6 makes provision for the mental health officer to take steps such as interviewing the patient and giving the patient information in relation to the proposed application.

Regulation 7 provides that where the responsible medical officer decides that an application should be made for a warrant for the patient’s removal, the application must contain the information listed.

Regulation 8 makes provision as to the information which will be considered and lists factors which the Scottish Ministers will take into account in deciding on an application and regulation 9 provides for notification of the decision to be given.

Regulation 10 provides for the issue of a warrant for removal, and the giving of any necessary directions in relation to the patient’s removal.

Regulation 11 provides that the removal is not to take place pending the appeal or determination of a reference.

Regulation 12 provides that where a patient is removed from Scotland any restriction order and conditional discharge will be treated as if they were made under the relevant enactment in force in that territory or country.

Regulation 13 provides that a patient may appeal against the proposed removal and regulations 14 and 15 provide for further appeals from a decision of the Tribunal to be made to the sheriff principal and the Court of Session, or in certain cases direct to the Court of Session.

Regulation 16 allows for the delay of any removal where a patient’s appeal to the Tribunal or the sheriff principal has been unsuccessful until the period allowed for a further appeal expires.

Regulations 17 and 18 make provision for a reference to be made in appropriate cases by the Commission to the Tribunal and for the procedure which will take place before the Tribunal makes its decision.

Regulation 19 provides that there can be no appeal nor reference once the removal has taken place.

Regulation 20 provides for notice to be given of the removal to the mental health officer, the Commission and where a patient, was subject to certain orders, the Scottish Ministers.

Regulation 21 provides powers for escorts from other territories or countries who are escorting patients being removed from Scotland.

Regulation 22 provides for a patient who absconds while being removed to be taken into custody.

Regulation 23 provides that when a patient removed from Scotland then becomes subject to measures in the territory or country where they have gone, the measures to which they were subject in Scotland will no longer have effect.

Regulation 24 makes provision for the consent of Scottish Ministers to the reception of a patient in Scotland where the request is made under provisions having effect in another country or territory and contains all the specified information to enable the Scottish Ministers to make a decision. They will notify the sending and receiving hospitals of their decision.

Regulation 25 provides for directions to be given by the Scottish Ministers as to the arrangements for transfer where the person or authority sending the patient have not made arrangements or where additional directions are required.

Regulation 26 provides that once the sending hospital has confirmed that the transfer is to go ahead the steps in regulations 27 to 29 are to be taken. Regulation 27 makes provision for the relevant local authority to be notified to allow them to designate a mental health officer for the patient under regulation 28.

Regulation 29 provides for the appointment of a responsible medical officer for the patient.

Regulation 30 makes provision for a patient received in Scotland to be treated as if they were subject to an order or direction made under the 2003 Act or the 1995 Act which most closely corresponds to the measure to which the patient was subject immediately before transfer.

Regulation 31 provides powers for escorts in Scotland taking the patient to their destination in Scotland and that such escorts coming from another territory can pursue and take into custody a patient who absconds or attempts to do and may use reasonable force in doing so.

Regulation 32 provides in addition, for the taking into custody of a patient who absconds by a person specified, and for the patient then to be returned to the escorts or taken to the hospital or another suitable destination.

Regulations 33 and 34 provide that the measures authorised to apply where a patient is treated as if subject to a compulsory treatment order, interim compulsory treatment order or compulsion order are detention in hospital and medical treatment given in accordance with Part 16 of the 2003 Act.

Regulation 35 provides the duties which apply to a designated mental health officer.

Regulation 36 makes provision for an assessment to be carried out of any patient received in Scotland by the responsible medical officer within 7 days of the patient's arrival, which is to include a medical examination and consideration of the appropriateness of the measures under the 2003 Act or the 1995 Act to which the patient has become treated as if subject.

Regulation 37 provides that where the responsible medical officer having assessed a patient treated as if subject to an emergency detention certificate or short-term detention certificate, is not satisfied that such a certificate is required or appropriate, the responsible medical officer shall revoke the certificate. Regulation 38 applies similarly in respect of a compulsory treatment order, interim compulsory treatment order or compulsion order.

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Regulations 39 and 40 make provision for the responsible medical officer to report, making recommendations following assessment of a patient subject to a compulsion order and restriction order, and either a hospital direction or transfer for treatment direction.

Regulation 41 provides for the responsible medical officer to report to the managers of the receiving hospital on the patient's mental disorder and whether it is necessary for measures under the 2003 Act or the 1995 Act to continue to be applied. The hospital managers shall then notify parties listed in that regulation of the matters specified.

Regulation 42 provides for the application of the sections of the 2003 Act on the preparation of care plans to apply to patients received in Scotland.

Regulation 43 applies section 260 of the 2003 Act to such patients to provide for information to be provided to those patients.

Regulation 44 provides that assistance is to be given to such patients who have communication difficulties.

Regulation 45 provides for such patients to be visited by the Commission within 6 months of their transfer.

Regulation 46 makes provision for the application of the sections in the 2003 Act on reviews of orders and directions in relation to such patients.