
Changes to legislation: There are currently no known outstanding effects for the Mental Health Act 2007, Cross Heading: Transfer of patients: Scotland. (See end of Document for details)

SCHEDULES

SCHEDULE 5

CROSS-BORDER ARRANGEMENTS

PART 1

AMENDMENTS TO PART 6 OF 1983 ACT

Transfer of patients: Scotland

2 In section 80 (removal of patients to Scotland) (the cross-heading immediately above which becomes “Removal to and from Scotland”), in subsection (1), omit the words “or subject to guardianship” and the words “or, as the case may be, for receiving him into guardianship”.

3 (1) After that section insert—

“80ZA Transfer of responsibility for community patients to Scotland

(1) If it appears to the appropriate national authority, in the case of a community patient, that the conditions mentioned in subsection (2) below are met, the authority may authorise the transfer of responsibility for him to Scotland.

(2) The conditions are—

- (a) a transfer under this section is in the patient's interests; and
- (b) arrangements have been made for dealing with him under enactments in force in Scotland corresponding or similar to those relating to community patients in this Act.

(3) The appropriate national authority may not act under subsection (1) above while the patient is recalled to hospital under section 17E above.

(4) In this section, “the appropriate national authority” means—

- (a) in relation to a community patient in respect of whom the responsible hospital is in England, the Secretary of State;
- (b) in relation to a community patient in respect of whom the responsible hospital is in Wales, the Welsh Ministers.”

(2) This paragraph does not extend to Scotland.

Commencement Information

II Sch. 5 para. 3 not in force at Royal Assent see s. 56(1); Sch. 5 para. 3 in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)

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- 4 (1) After section 80A (the title to which becomes (“ Transfer of responsibility for conditionally discharged patients to Scotland ”)) insert—

Removal of detained patients from Scotland

“80B(1) This section applies to a patient if—

- (a) he is removed to England and Wales under regulations made under section 290(1)(a) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”);
 - (b) immediately before his removal, his detention in hospital was authorised by virtue of that Act or the Criminal Procedure (Scotland) Act 1995; and
 - (c) on his removal, he is admitted to a hospital in England or Wales.
- (2) He shall be treated as if, on the date of his admission to the hospital, he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the enactment in force in England and Wales which most closely corresponds to the enactment by virtue of which his detention in hospital was authorised immediately before his removal.
- (3) If, immediately before his removal, he was subject to a measure under any enactment in force in Scotland restricting his discharge, he shall be treated as if he were subject to an order or direction under the enactment in force in England and Wales which most closely corresponds to that enactment.
- (4) If, immediately before his removal, the patient was liable to be detained under the 2003 Act by virtue of a transfer for treatment direction, given while he was serving a sentence of imprisonment (within the meaning of section 136(9) of that Act) imposed by a court in Scotland, he shall be treated as if the sentence had been imposed by a court in England and Wales.
- (5) If, immediately before his removal, the patient was subject to a hospital direction or transfer for treatment direction, the restriction direction to which he is subject by virtue of subsection (3) above shall expire on the date on which that hospital direction or transfer for treatment direction (as the case may be) would have expired if he had not been so removed.
- (6) If, immediately before his removal, the patient was liable to be detained under the 2003 Act by virtue of a hospital direction, he shall be treated as if any sentence of imprisonment passed at the time when that hospital direction was made had been imposed by a court in England and Wales.
- (7) Any directions given by the Scottish Ministers under regulations made under section 290 of the 2003 Act as to the removal of a patient to which this section applies shall have effect as if they were given under this Act.
- (8) Subsection (8) of section 80 above applies to a reference in this section as it applies to one in that section.
- (9) In this section—
- “hospital direction” means a direction made under section 59A of the Criminal Procedure (Scotland) Act 1995; and
- “transfer for treatment direction” has the meaning given by section 136 of the 2003 Act.

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Removal of patients subject to compulsion in the community from Scotland

80C (1) This section applies to a patient if—

- (a) he is subject to an enactment in force in Scotland by virtue of which regulations under section 289(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 apply to him; and
 - (b) he is removed to England and Wales under those regulations.
- (2) He shall be treated as if on the date of his arrival at the place where he is to reside in England or Wales—
- (a) he had been admitted to a hospital in England or Wales in pursuance of an application or order made on that date under the corresponding enactment; and
 - (b) a community treatment order had then been made discharging him from the hospital.
- (3) For these purposes—
- (a) if the enactment to which the patient was subject in Scotland was an enactment contained in the Mental Health (Care and Treatment) (Scotland) Act 2003, the corresponding enactment is section 3 of this Act;
 - (b) if the enactment to which he was subject in Scotland was an enactment contained in the Criminal Procedure (Scotland) Act 1995, the corresponding enactment is section 37 of this Act.
- (4) “The responsible hospital, in the case of a patient in respect of whom a community treatment order is in force by virtue of subsection (2) above, means the hospital to which he is treated as having been admitted by virtue of that subsection, subject to section 19A above.
- (5) As soon as practicable after the patient's arrival at the place where he is to reside in England or Wales, the responsible clinician shall specify the conditions to which he is to be subject for the purposes of section 17B(1) above, and the conditions shall be deemed to be specified in the community treatment order.
- (6) But the responsible clinician may only specify conditions under subsection (5) above which an approved mental health professional agrees should be specified.

Transfer of conditionally discharged patients from Scotland

80D (1) This section applies to a patient who is subject to—

- (a) a restriction order under section 59 of the Criminal Procedure (Scotland) Act 1995; and
 - (b) a conditional discharge under section 193(7) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”).
- (2) A transfer of the patient to England and Wales under regulations made under section 290 of the 2003 Act shall have effect only if the Secretary of State has consented to the transfer.

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- (3) If a transfer under those regulations has effect, the patient shall be treated as if—
- (a) on the date of the transfer he had been conditionally discharged under section 42 or 73 above; and
 - (b) he were subject to a hospital order under section 37 above and a restriction order under section 41 above.
- (4) If the restriction order to which the patient was subject immediately before the transfer was of limited duration, the restriction order to which he is subject by virtue of subsection (3) above shall expire on the date on which the first-mentioned order would have expired if the transfer had not been made.”
- (2) This paragraph does not extend to Scotland.

Commencement Information

I2 Sch. 5 para. 4 not in force at Royal Assent see s. 56(1); Sch. 5 para. 4 in force for specified purposes for E.W. at 1.10.2007 by S.I. 2007/2798, art. 2(c)(i); Sch. 5 para. 4 in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)

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