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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2008 No.**

The Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008

PART II

REMOVAL OF PATIENTS FROM SCOTLAND

**Responsible medical officer's duties: notification of proposed removal**

3. Where—

- (a) a patient has notified their responsible medical officer of the patient's wish to be removed; or
- (b) in the case where the patient is not capable of giving that notification, the patient's named person has notified the patient's responsible medical officer that that person considers that it is in the patient's best interests to be removed;

the responsible medical officer shall as soon as practicable give notice of that fact and any surrounding circumstances of the case to—

- (i) except where the notification referred to in paragraph (b) above has been given by the patient's named person, that person;
- (ii) the Commission;
- (iii) any guardian of the patient;
- (iv) any welfare attorney of the patient;
- (v) the patient's primary carer;
- (vi) the managers of the hospital specified in the patient's order; and
- (vii) the patient's mental health officer.

**Mental health officer's duties where notified of proposed removal**

4.—(1) The mental health officer shall as soon as practicable after being notified under regulation 3, and in any event within the period of 3 working days beginning with the day after the day on which notice was given, comply with the requirements in paragraph (2).

(2) Those requirements are—

- (a) to interview the patient; and
- (b) to inform the patient's responsible medical officer—
  - (i) of whether the mental health officer agrees or disagrees that the patient be removed;
  - (ii) if the mental health officer disagrees the reason why that is the case; and
  - (iii) of any other matters that the mental health officer considers relevant.

### **Information and factors to be considered by responsible medical officer in respect of a warrant for removal**

5.—(1) The responsible medical officer shall, as soon as practicable after receiving the information required from the mental health officer under regulation 4(2)(b), decide whether to authorise the removal of the patient from Scotland.

(2) When deciding whether to authorise the removal of a patient from Scotland under this regulation, the responsible medical officer shall have regard to the following factors—

- (a) the best interests of the patient;
- (b) that the responsible clinician and responsible hospital in England or Wales are aware of any recorded matters specified in the patient’s order;
- (c) the risk to the safety of any person; and
- (d) any views expressed by the mental health officer under regulation 4(2)(b),

and in any event may give authority for removal of the patient only if satisfied that there are in existence in England or Wales arrangements which will secure for the patient 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.

### **Notification of decision**

6. The responsible medical officer shall, as soon as practicable after making a decision under regulation 5 on whether or not to authorise removal of a patient from Scotland, give notice of that decision to—

- (a) the patient;
- (b) the patient’s named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the Commission;
- (f) the managers of the hospital specified in the patient’s order;
- (g) the mental health officer;
- (h) the responsible hospital in England or Wales; and
- (i) if applicable, the responsible clinician in England or Wales.

### **Warrant for removal**

7.—(1) Subject to paragraph (2), where the responsible medical officer decides that a patient be removed from Scotland the responsible medical officer 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 responsible medical officer until any consent required in England or Wales has been obtained.

(3) In issuing a warrant for removal the responsible medical officer may give directions for the patient’s conveyance to the patient’s destination on removal from Scotland.

(4) The warrant for removal shall specify an effective date for the patient’s removal and a warrant issued under this regulation will only authorise removal of the patient within the period of 14 days which begins on the day after the effective date.

(5) In issuing the warrant for removal, the responsible medical officer shall immediately send a copy of the warrant to—

- (a) the patient;
- (b) the patient's named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the Commission;
- (f) the managers of the hospital specified in the patient's order;
- (g) the mental health officer;
- (h) the responsible hospital in England or Wales; and
- (i) if applicable, the responsible clinician in England or Wales.

(6) In this regulation "effective date" is the date specified by the responsible medical officer in the warrant as the date on or after which the removal is authorised to take place and shall be not sooner than 3 working days beginning with the day after the date on which the warrant is signed by the responsible medical officer.

### **Appeal to Tribunal**

**8.**—(1) Where notice is given under regulation 6 that a patient is not to be removed from Scotland, the patient or the patient's named person, may, during the period of 14 days beginning with the date on which notice is received, appeal to the Tribunal against the decision of the responsible medical officer not to authorise 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 take place.

(3) On an appeal under paragraph (1) the Tribunal may:

- (a) make no direction to the responsible medical officer under this regulation; or
- (b) direct the responsible medical officer to issue a warrant for removal which shall authorise that patient's removal from Scotland, and that as soon as practicable after the direction is made, but subject always to any consent required under regulation 7(2) being obtained.

(4) The responsible medical officer shall, if so directed by the Tribunal under paragraph (3)(b), issue a warrant for removal, in accordance with regulation 7, which shall authorise that patient's removal from Scotland, and that as soon as practicable after the direction is made.

### **Appeal from Tribunal**

**9.**—(1) Subject to the modifications in paragraphs (2) and (3), sections 320 and 321 of the 2003 Act apply to decisions of the Tribunal to make or refuse to make an order under regulation 8(2).

(2) In section 320(5) omit paragraphs (c) and (d).

(3) In section 321(2) after the words "this Act", add "as modified by the Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008(1)".

### **Notification requirements: post removal**

**10.** Where the patient is removed from Scotland under this Part of these Regulations the managers of the hospital specified in the patient's order 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—

- (a) the date of removal; and

- (b) the address of the place where the patient after removal is to reside.

### **Escorts from other territories: powers**

**11.**—(1) This regulation applies to persons from England and Wales, who are—

- (a) authorised to escort patients in England and Wales; and
- (b) authorised to escort the patient from Scotland by virtue of directions given in accordance with regulation 7(3).

(2) Persons referred to in paragraph (1) will have the same power 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**

**12.**—(1) Paragraph (4) applies if—

- (a) a warrant for removal of the patient has been issued under regulation 7; 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, England and Wales but has not yet reached their destination;
- (b) absconds before the measures to which the patient is subject in Scotland ceases to have effect by virtue of regulation 13; and
- (c) returns to Scotland.

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

(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 289 of this Act, absconds.”.

### **Cessation of requirements**

**13.** Where a patient who is subject to a relevant requirement 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 requirement to which the patient is subject shall cease to have effect when the patient becomes subject to a corresponding requirement in England or Wales.