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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 452**

**The Mental Health (Care and Treatment) (Scotland) Act  
2003 (Transitional and Savings Provisions) Order 2005**

**PART 6**

**HOSPITAL DIRECTIONS**

**Hospital directions**

**25.**—(1) Notwithstanding section 213(6) of the 2003 Act, the relevant day in respect of a hospital direction patient is the day which falls 2 years after the day when the hospital direction was made or the anniversary of that day, whichever falls in the period of 12 months prior to 5th October 2005.

(2) Where a hospital direction patient has made an appeal under section 63 of the 1984 Act that patient shall be treated—

- (a) where the appeal was made in any period of 12 months beginning with the date of the hospital direction under which that patient was detained, as if an application had been made to the Tribunal under section 214 of the 2003 Act in the period mentioned in section 214(6)(a); or
- (b) where the appeal was made in any subsequent period of 12 months, as if an application had been made to the Tribunal under section 214 of the 2003 Act in the period mentioned in section 214(6)(b).

(3) The authority conferred by section 62A(1) of the 1984 Act shall continue to have effect in respect of any hospital direction patient until that patient has been conveyed to hospital.

(4) Any directions given before 5th October 2005 under section 62A(3) of the 1984 Act shall be deemed to have been made under section 59C of the 1995 Act.

**Leave of absence**

**26.**—(1) Notwithstanding section 224(4) of the 2003 Act, where for the period immediately before 5th October 2005 a hospital direction patient has been granted leave of absence under section 27 of the 1984 Act as applied by Part 2 of schedule 2 of that Act, that patient shall be treated as if a certificate had been granted under section 224(2) of the 2003 Act for the specified occasions for which the leave of absence was granted under section 27.

(2) Any direction made or condition imposed under section 27(3) of the 1984 Act as applied by Part 2 of schedule 2 of that Act shall be deemed to be a condition included in a certificate granted under section 224(2) of the 2003 Act.

(3) Where by 5th October 2005 the Commission has not been notified of a grant of leave of absence or an extension of leave of absence under section 27(4) of the 1984 Act, the responsible medical officer shall, before the expiry of the period of 14 days beginning with the day of the granting of leave, give notice of it to the Commission.

### **Transfer provisions**

**27.**—(1) Where a hospital direction patient has been transferred in accordance with the provisions of section 29 of the 1984 Act as applied by schedule 2 of that Act, and no intimation of the transfer has yet been made in accordance with section 29(2) of the 1984 Act at 5th October 2005, such intimation shall be made within 7 days of the transfer.

(2) Where a hospital direction patient is transferred to a state hospital on or after 8th September 2005 and no appeal is lodged under section 29(4) of the 1984 Act by 5th October 2005, the patient shall be treated as if section 220 of the 2003 Act applied to that patient.

(3) Where a hospital direction patient is transferred to a state hospital on or after 8th September 2005 and an appeal is lodged under section 29(4) of the 1984 Act but not determined by 5th October 2005, section 29(4) shall continue to have effect in respect of that appeal.

### **Absconding**

**28.** Where immediately before 5th October 2005 a hospital direction patient is a patient such as is referred to in section 28(1)(a), (b) or (c) of the 1984 Act—

- (a) that patient shall be treated as liable to be taken into custody, under regulations made under section 310 of the 2003 Act and dealt with in accordance with those regulations; and
- (b) the period of the patient's absence shall be calculated from and including the first day of the patient's absence notwithstanding the date when the patient became subject to the 2003 Act.