
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.

Status: This is the original version (as it was originally made).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

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.

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.