
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 467

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

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⁽¹⁾.

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⁽²⁾, 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.

(1) 1971 c. 80.
(2) 2003 asp 13.

(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;
- (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.