

Executive Note

The Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005 S.S.I. 2005/467

The above instrument is made in exercise of the powers conferred by section 290 and 326 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Act”). This instrument is subject to affirmative resolution procedure.

Policy Objectives

The purpose of the instrument is to specify the measures to be adopted for the transfer of patients subject to a detention requirement or otherwise in hospital from Scotland and the reception in Scotland for patients subject to corresponding measures in respect of those in England and Wales, Northern Ireland, the Isle of Man or the Channel Islands. These Regulations make provision for those transfers to take place.

The Regulations are in three parts;

- Part 1 – General Information and interpretation
- Part 2 – Removal of patients from Scotland
- Part 3 – Reception of persons in Scotland

Part 2 – The duties of the Responsible Medical Officer (RMO) are detailed where an application is to be made to Scottish Ministers for the transfer of the patient. When an application is being proposed the RMO should give notice to;

- The patient
- The patient’s named person
- The patient’s primary carer if removal is to be a place out with the United Kingdom
- Any guardian of the patient
- Any welfare attorney of the patient
- The Mental Health Officer (MHO) where appropriate and
- The local authority, when appropriate.

Where an application is being proposed the RMO has to comply with a number of requirements set out in the Regulations, involving interviewing the patient and informing them of their rights in relation to the application. The MHO must inform the patient of the advocacy services available under the terms of the Act, ensuring the patient has the opportunity to use these services.

Scottish Ministers, when deciding whether to authorise an application, must consider a number of factors such as the best interest of the patient, the patient’s security after being removed from Scotland and the treatment care or services once transferred.

The consent of the country or relevant territory is required before Scottish Ministers will consider approving a warrant authorising the patient’s transfer. Notice of the decision must be given to the patient, their named person and MHO and to the Mental Welfare Commission.

Patients have a right to appeal against the proposed removal to the Tribunal, thence to the sheriff principal and Court of Session against certain decisions. The grounds of appeal depend on the nature of the detention the patient is subject to. Pending an appeal any warrant issued shall be suspended. An appeal cannot be made once the removal has taken place.

The Regulation details the powers of escorts from other territories and the process should a patient abscond or attempt to abscond during the transfer.

Part 3 – This deals with the issues and processes where it is proposed to receive a patient in Scotland. These transfers require the consent of Scottish Ministers who will consider requests made by either the patient or authority exercising corresponding functions in a relevant territory. Details of the information required by Scottish Ministers are listed in the Regulations. Where consent to the reception in Scotland is given Scottish Ministers can consider any directions as to the patient’s conveyance to their destination in Scotland.

Regulations specify the relevant people and agencies who must be informed after receiving notice of a proposed move. Local authorities will receive details of the patient and they will appoint an RMO responsible for the patient. On reception in Scotland the patient is subject to measures corresponding to those which the patient was subject to immediately before the transfer.

The processes to be adopted giving appropriate powers to escorts taking a patient to their destination in Scotland, and how to deal with a patient who absconds en-route to their destination are detailed in Regulations.

The duties of the RMO are listed dealing with;

- Revocation of emergency or short-term detention certificates
- Revoking an interim compulsory treatment order, a compulsory treatment order or a compulsion order
- Recommendations following assessment of patient
- Requirements post transfer
- Care plans

Once the patient is received in Scotland they are subject to the provisions of the 2003 Act.

Within 6 months of the date being received in Scotland the Commission shall secure that an authorised person visits each patient.

Consultation

Policy on these Regulations was consulted on formally in a “regulation policy proposals consultation document” published in summer 2004. Further informal consultation has also taken place by way of discussion with the Scottish Executive’s Mental Health Legislation Reference Group.

Financial Effects

The Order has no financial effects on the Scottish Executive or any other organisation.

Scottish Executive Health Department
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