
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 III

RECEPTION OF PERSONS IN SCOTLAND

Assessment of patient: post transfer

36.—(1) The patient's responsible medical officer shall within 7 days of the patient's reception in Scotland carry out an assessment of the patient in accordance with the requirements of paragraph (2).

(2) Those requirements are—

- (a) to carry out a medical examination of the patient; or
- (b) to make arrangements for an approved medical practitioner to carry out such an examination;
- (c) to consult and have regard to the views of the patient's mental health officer designated under regulation 28; and
- (d) to consider—
 - (i) whether the conditions in paragraph (4) apply in respect of the patient; and
 - (ii) whether, subject to paragraph (5), it continues to be necessary for the patient to be subject to the measures authorised by the 2003 Act or the 1995 Act to which the patient became treated as if they were subject by virtue of regulation 30.

(3) Where a medical examination is carried out under paragraph (2), there must not be a conflict of interest in relation to the medical examination.

(4) The conditions referred to in paragraph (2)(d)(i) are—

- (a) where the patient has, by virtue of regulation 30 become treated as if they are subject to one of the orders or directions listed in paragraph (6)—
 - (i) that the patient has a mental disorder;
 - (ii) that medical treatment which would be likely to—
 - (aa) prevent the mental disorder worsening; or
 - (bb) alleviate any of the symptoms, or effects, of the disorder,is available for the patient; and
 - (iii) that if the patient were not provided with such medical treatment there would be a significant risk—
 - (aa) to the health, safety or welfare of the patient; or
 - (bb) to the safety of any other person;

- (b) where the patient has, by virtue of regulation 30 become treated as if they are subject to an emergency detention certificate or to a short term detention certificate, the conditions are—
 - (i) that the patient has a mental disorder;
 - (ii) that because of the mental disorder, the patient’s ability to make decisions about the provision of medical treatment is significantly impaired; and
 - (iii) that if the patient were not detained in hospital there would be a significant risk—
 - (aa) to the health, safety or welfare of the patient; or
 - (bb) to the safety of any other person;
- (c) where the patient has, by virtue of regulation 30 become treated as if they are subject to an interim compulsory treatment order or a compulsory treatment order the conditions are—
 - (i) that the patient has a mental disorder;
 - (ii) that medical treatment which would be likely to—
 - (aa) prevent the mental disorder worsening; or
 - (bb) alleviate any of the symptoms, or effects, of the disorder,is available for the patient;
 - (iii) that if the patient were not provided with such medical treatment there would be a significant risk—
 - (aa) to the health, safety or welfare of the patient; or
 - (bb) to the safety of any other person; and
 - (iv) that because of the mental disorder the patient’s ability to make decisions about the provision of such medical treatment is significantly impaired.
- (5) Where the patient has by virtue of regulation 30 become treated as if they are subject to—
 - (a) a compulsion order and restriction order;
 - (b) a hospital direction;
 - (c) a transfer for treatment direction,in addition to matters specified in paragraph (2)(d)(ii) the responsible medical officer shall also consider whether, as a result of the patient’s mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment.
- (6) The orders and directions referred to in paragraph (4)(a) are—
 - (a) a compulsion order;
 - (b) a compulsion order and a restriction order;
 - (c) a hospital direction; and
 - (d) a transfer for treatment direction.
- (7) For the purposes of this regulation, the circumstances where there is to be taken to be a conflict of interest are those circumstances specified in the Mental Health (Conflict of Interest) (Scotland) (No. 2) Regulations 2005(1).