

MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 12 - Parts 10 and 11: Transfers

Section 218: transfer of patients between hospitals

393. **Section 218** provides for the transfer by hospital managers of patients subject to compulsion orders combined with restriction orders, hospital directions or transfer for treatment directions. The hospital managers may transfer patients between hospitals provided that the managers of the hospital receiving the patient and the Scottish Ministers consent to the transfer. The managers of the hospital that is proposing to transfer a patient have a duty to notify the patient and the patient's named person at least 7 days before the proposed transfer unless it is necessary that the patient is transferred urgently or the patient consents to the transfer. Where the 7-day period of notice has not been given because the transfer was a matter of urgency then notice should be given to the patient and the patient's named person as soon as practicable.
394. Where the patient and the named person have been notified of the patient's proposed transfer to another hospital but the transfer has not taken place within 3 months of the notice being given, the transfer can take place only if the managers of the receiving hospital still agree to the transfer and the patient and the patient's named person have once again been given 7 days' notice, unless the matters in subsections (5) and (7) apply.
395. Where the patient has been transferred, the managers of the hospital from which the patient was transferred must notify the Commission within 7 days of the transfer having taken place. The notification should include the information listed in subsection (13).
396. Subsection (14) provides that, following a transfer, the order or direction to which the patient is subject has effect as if the hospital the patient was transferred to the hospital specified in the order or direction.

Section 219: appeal to Tribunal against transfer under section 218 to hospital other than state hospital

397. **Section 219** provides for an appeal to the Tribunal by the patient or the patient's named person against a transfer to a hospital other than the state hospital. The appeal must be made within a time limit set out in subsection (3). Which time limit applies depends on whether the appeal is by the patient or the named person and on whether (and, if so, when) notice is given.
398. Where an appeal has been lodged with the Tribunal in advance of the transfer taking place, the transfer may not take place except where the Tribunal orders that it should do so, pending the outcome of the appeal.

*These notes relate to the Mental Health (Care and Treatment) (Scotland)
Act 2003 (asp 13) which received Royal Assent on 25 April 2003*

399. When dealing with an appeal the Tribunal has power to order that the patient be transferred back to the original hospital.

Section 220: appeal to Tribunal against transfer under section 218 to state hospital

400. **Section 220** provides for an appeal to the Tribunal by the patient or the patient's named person against a transfer to a state hospital. The appeal must be made within a time limit set out in subsection (3). Which time limit applies depends on whether the appeal is by the patient or the named person and on whether (and, if so, when) notice is given.
401. As with section 219, where an appeal has been lodged with the Tribunal in advance of the transfer taking place, the transfer may not take place except where the Tribunal orders that it should do so pending the outcome of the appeal. The Tribunal has the same powers on an appeal under this section as it has under section 219, subject to subsection (6). That subsection provides that Tribunal can stop or reverse a transfer to a state hospital only if it is not satisfied that the patient must be detained under conditions of special security which can be provided only in a state hospital.