
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 452

**The Mental Health (Care and Treatment) (Scotland) Act
2003 (Transitional and Savings Provisions) Order 2005**

PART 3

PATIENTS DETAINED UNDER A HOSPITAL ORDER

Deemed compulsion order

9.—(1) A 1995 Act patient shall be treated as if that patient was subject to a compulsion order made under section 57A(2) of the 1995 Act.

(2) The deemed compulsion order—

- (a) authorises the measures mentioned in section 57A(8)(a) and (b) of the 1995 Act for the remaining period of time for which there was authority for the detention of the patient under the hospital order;
- (b) is deemed to specify the form of mental disorder specified in the hospital order under which the patient was detained, except that the form of mental disorder specified by the deemed compulsion order is—
 - (i) learning disability where the form of mental disorder specified in the hospital order is mental handicap; and
 - (ii) personality disorder where the form of mental disorder specified in the hospital order is mental illness consisting of personality disorder; and
- (c) is deemed to specify the hospital in which the patient is detained immediately before 5th October 2005 or, if the patient has not yet been admitted to hospital, is deemed to specify the hospital specified in the hospital order.

(3) The authority conferred by section 60(1)(a) of the 1984 Act shall continue to have effect in respect of any 1995 Act patient until that patient has been conveyed to hospital.

(4) Any directions given before 5th October 2005 under section 58(9) of the 1995 Act shall continue to have effect until the patient has been admitted to hospital.

(5) For the purposes of section 57D(1) of the 1995 Act a compulsion order shall be deemed to have been made when the hospital order under which the patient was detained was made.

Review, revocation and variation of deemed compulsion order

10.—(1) A 1995 Act patient shall be treated, for the purposes of section 164 of the 2003 Act as if the deemed compulsion order to which that patient is subject had been made on the same day as the hospital order under which the patient was detained.

(2) Where authority for the detention of a 1995 patient has, prior to 5th October 2005, been renewed under section 30 of the 1984 Act, that patient shall be treated—

- (a) where the authority for the detention has been renewed once, as if an order had been made under section 167(1)(a) of the 2003 Act;
 - (b) where the authority for the detention has been renewed more than once, as if a determination had been made under section 152(2) of the 2003 Act.
- (3) Where a 1995 Act patient has within a period of detention immediately preceding 5th October 2005 made an unsuccessful appeal to the sheriff to order discharge, that patient shall be treated as if an application under section 163 of the 2003 Act for revocation of a determination extending the deemed compulsion order had been refused within that period.
- (4) When a determination has been made for the first time on or after 5th October 2005 under section 152 of the 2003 Act to extend a compulsion order, section 165(2)(b) of the 2003 Act shall in respect of 1995 Act patients be modified so that for the words from “ending” to “it” there shall be substituted “starting with the first day of the period for which detention was last renewed under the 1984 Act”.
- (5) When on or after 5th October 2005 an application is first made under section 149 of the 2003 Act for an order extending the compulsion order, or a determination is made for the first time under section 152 of the 2003 Act, the responsible medical officer shall send to the Tribunal a copy of the patient’s Part 9 care plan and the mental health officer’s report mentioned in paragraph (8).
- (6) At the same time as a copy of the patient’s Part 9 care plan and mental health officer’s report are sent to the Tribunal, the responsible medical officer shall send a copy of them—
- (a) subject to paragraph (7), to the patient;
 - (b) to the patient’s named person;
 - (c) to the mental health officer;
 - (d) to the Commission.
- (7) If the responsible medical officer considers that there would be a risk of significant harm to the patient, or to others, if a copy of either the Part 9 care plan or mental health officer’s report were sent to the patient, that officer need not send that copy to the patient.
- (8) When a determination or an application mentioned in paragraph 5 is to be made, the patient’s mental health officer shall prepare a report setting out—
- (a) the views of the mental health officer on the determination or application and the reasons for those views;
 - (b) if known to the mental health officer, the views of the patient and the patient’s named person on the determination or application and the reasons for those views;
 - (c) in so far as the mental health officer considers relevant for the purposes of the review, details of the personal circumstances of the patient;
 - (d) if known to the mental health officer, details of any advance statement that the patient has made (and not withdrawn);
 - (e) any other information which the mental health officer considers may assist the Tribunal in considering the determination or application; and
 - (f) the social circumstances report, if available.

Transfer provisions

11.—(1) Where a 1995 Act patient has been transferred in accordance with the provisions of section 29 of the 1984 Act, and no intimation of the transfer has yet been made in accordance with section 29(2) of the 1984 Act immediately before 5th October 2005, such intimation shall be made within 7 days of the transfer.

(2) Where a 1995 Act patient is transferred to a state hospital on or after 8th September 2005 and no appeal is lodged under section 29(4) of the 1984 Act immediately before 5th October 2005, the patient shall be treated as if section 126 of the 2003 Act applied to that patient.

(3) Where a 1995 Act patient is transferred to a state hospital on or after 8th September 2005 and an appeal is lodged under section 29(4) of the 1984 Act but not determined immediately before 5th October 2005, section 29(4) of the 1984 Act shall continue to have effect in respect of that appeal.

Leave of absence

12.—(1) Notwithstanding section 127(2) of the 2003 Act, where for the period immediately before 5th October 2005 a 1995 Act patient has been granted leave of absence under section 27 of the 1984 Act, whether or not that leave has been extended, that patient shall be treated as if a certificate had been granted under section 127(1) of the 2003 Act for the period of absence granted under section 27 except that the total period of absence shall be no more than 12 months from the first day of absence or 9 months from 5th October 2005, whichever expires earlier.

(2) Any direction made or condition imposed under section 27(3) of the 1984 Act in connection with a 1995 Act patient shall be deemed to be a condition included in a certificate granted under section 127(1) of the 2003 Act.

(3) Where immediately before 5th October 2005 the Commission has not been notified of a grant of leave of absence or an extension of leave of absence under section 27(4) of the 1984 Act, the responsible medical officer shall, before the expiry of the period of 14 days beginning with the day of the granting of leave or extension, give notice of it to the Commission.

Absconding

13. Where immediately before 5th October 2005 a 1995 Act patient is a patient such as is referred to in section 28(1)(a), (b) or (c) of the 1984 Act—

- (a) that patient shall be treated as liable to be taken into custody under the regulations made under section 310 of the 2003 Act and dealt with in accordance with those regulations; and
- (b) the period of the patient's absence shall be calculated from the first day of the patient's absence notwithstanding the date when the deemed compulsion order takes effect.