
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 452

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

PART 5

RESTRICTION ORDERS

Restriction orders

20.—(1) A restricted patient shall be treated as if a compulsion order under section 57A(2) of the 1995 Act and a restriction order under section 59 of the 1995 Act had been made in respect of that patient.

(2) For the purposes of sections 182(5) and 192(4) the compulsion order shall be deemed to have been made when the hospital order to which the patient was subject immediately before 5th October 2005 was made or is treated as having been made.

(3) Notwithstanding section 189(6), the relevant day in respect of a restricted patient is the day which falls 2 years after the day when the hospital order was made or the anniversary of that day, whichever falls in the period of 12 months prior to 5th October 2005.

(4) Where a restricted patient has made an appeal under section 63 of the 1984 Act that patient shall be treated—

- (a) where the appeal was made in any period of 12 months beginning with the date of the hospital order under which that patient was detained, as if an application had been made to the Tribunal under section 192 of the 2003 Act in the period mentioned in section 192(5)(a); or
- (b) where the appeal was made in any subsequent period of 12 months, as if an application had been made to the Tribunal under section 192 of the 2003 Act in the period mentioned in section 192(5)(b).

(5) Where a restricted patient has made an appeal under section 66 of the 1984 Act in the 12 months ending with 4th October 2005, that patient shall be treated as if that appeal had been an application under section 192 of the 2003 Act.

(6) When for the first time in respect of any restricted patient on or after 5th October 2005 the Scottish Ministers make a reference to the Tribunal under section sections 185(1) or 187(2) or an application under section 191 of the 2003 Act, they shall send to the Tribunal a report from the patient's mental health officer such as is mentioned in article 10(8) and a copy of the most recent care plan for the patient.

Leave of absence

21.—(1) Notwithstanding section 224(4) of the 2003 Act, where for the period immediately before 5th October 2005 a restricted patient has been granted leave of absence under section 27 of the 1984 Act as applied by Part 2 of schedule 2 of that Act, that patient shall be treated as if a certificate

had been granted under section 224(2) of the 2003 Act for the specified occasions for which the leave of absence was granted under section 27.

(2) Any direction made or condition imposed under section 27(3) of the 1984 Act as applied by Part 2 of schedule 2 of that Act shall be deemed to be a condition included in a certificate granted under section 224(2) of the 2003 Act.

(3) Where by 5th October 2005 the Commission has not been notified of a grant 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, give notice of it to the Commission.

Transfer provisions

22.—(1) Where a restricted patient has been transferred in accordance with the provisions of section 29 of the 1984 Act as applied by schedule 2 of that Act, and no intimation of the transfer has yet been made in accordance with section 29(2) of the 1984 Act at 5th October 2005, such intimation shall be made within 7 days of the transfer.

(2) Where a restricted 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 by 5th October 2005, the patient shall be treated as if section 220 of the 2003 Act applied to that patient.

(3) Where a restricted 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 by 5th October 2005, section 29(4) shall continue to have effect in respect of that appeal.

Absconding

23. Where immediately before 5th October 2005 a restricted 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 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 and including the first day of the patient's absence notwithstanding the date when the patient became subject to the 2003 Act.

Conditional Discharge

24.—(1) Where before 5th October 2005 a restricted patient has been conditionally discharged under sections 64(2) or 68(2) of the 1984 Act, that patient shall be treated as if—

- (a) the Tribunal had made an order that the patient be conditionally discharged under section 193(7) of the 2003 Act; and
- (b) the conditions imposed under sections 64(2) or 68(2) of the 1984 Act had been imposed by the Tribunal.

(2) Where before 5th October 2005 the sheriff has deferred a direction for conditional discharge under section 64(7) of the 1984 Act,

- (a) that section shall continue to have effect in respect of the patient in question until a direction for conditional discharge has been made; and
- (b) once the direction for conditional discharge has been made the patient shall be treated as mentioned in paragraph (1).

(3) Where in the 28 day period ending with 5th October 2005 a 1995 Act patient has been conditionally discharged and subsequently recalled under section 68(3) of the 1984 Act and has not

appealed against such recall, that patient shall be treated as if recalled under section 202 of the 2003 Act.