
EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 289 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) provides for the transfer of patients subject to a requirement other than detention to a place outwith Scotland and for patients subject to corresponding requirements in England, Wales, Northern Ireland, the Isle of Man or the Channel Islands to be received in Scotland. These Regulations make provision in relation to the transfer of patients to England and Wales and the reception in Scotland of patients from England and Wales. Part I of these Regulations make general provision; Part II (regulations 3 to 13) makes provision for the removal of patients from Scotland; Part III (regulations 14 to 33) makes provision for the reception of persons in Scotland; whilst Part IV (regulation 34) amends other legislation consequential on these Regulations.

Regulation 2 provides that Part II applies to the removal of patients subject to a “relevant requirement” within the meaning of section 289(3) of the 2003 Act. Part III applies to the reception in Scotland of patients subject to corresponding requirements within the meaning of section 289(4) of the 2003 Act. The Regulations do not apply to patients subject to interim orders or the patients who are in breach of a compulsory treatment or compulsion order.

Regulation 3 provides that where a patient’s responsible medical officer receives notice from the patient or the patient’s named person proposing removal of the patient from Scotland, the responsible medical officer must give notice of that fact and any surrounding circumstances of the case to the parties listed in that regulation.

Regulation 4 requires the mental health officer to interview the patient and inform the responsible medical officer of whether the mental health officer agrees or disagrees that the patient should be removed.

Regulation 5 lists the factors which the responsible medical officer shall consider in deciding whether to issue a warrant for removal.

Regulation 6 provides for notification of the decision (whether in favour of or against the proposed removal) to be given to the parties listed.

Regulation 7 provides for the issue of a warrant for removal and the giving of any necessary directions in relation to the patient’s removal, where the registered medical officer has decided that the patient be removed.

Regulation 8 provides a right of appeal to the patient and the patient’s named person to the Tribunal against any decision of the responsible medical officer not to authorise the patient’s transfer to England or Wales, and regulation 9 provides for a further appeal from a decision of the Tribunal to be made to the sheriff principal and the Court of Session.

Regulation 10 provides for notice to be given of the removal to the mental health officer and the Mental Welfare Commission within 7 days of the removal.

Regulation 11 provides powers for escorts from other territories or countries while escorting patients in Scotland.

Regulation 12 provides for a patient who absconds while being removed to be taken into custody.

Regulation 13 provides that when a patient removed from Scotland becomes subject to requirements in England or Wales, the requirements to which they were subject in Scotland will no longer have effect.

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Regulation 14 makes provision for the consent of the managers of the receiving hospital to the reception of a patient in Scotland where the request is made in respect of a patient subject to corresponding requirements in England and Wales.

Regulation 15 provides for directions to be given by the managers of the receiving hospital as to the arrangements for transfer where the person or authority sending the patient have not made arrangements or where additional directions are required.

Regulation 16 provides for the relevant local authority to be notified to allow a mental health officer to be designated under regulation 17.

Regulation 17 provides for the designation of a mental health officer responsible for the patient's case.

Regulation 18 provides for the appointment of a responsible medical officer.

Regulation 19 provides for a patient received in Scotland to be treated as if that patient were subject to an order or direction made under the 2003 Act or the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") which most closely corresponds to the measure to which the patient was subject immediately before transfer.

Regulations 20 and 21 provide that the measures authorised to apply where a patient is subject to a compulsory treatment order or compulsion order are those authorised under section 66(1)(b) to (h) of the 2003 Act or section 57A((8)(b) to (h) and (9) of the 1995 Act respectively which most closely correspond to the measures to which the patient was subject immediately before the transfer.

Regulation 22 provides for escorts in Scotland taking the patient to his or her destination in Scotland.

Regulation 23 provides in addition for the taking into custody of a patient who absconds by a person specified and for the patient then to be returned to the escorts or taken to another suitable destination.

Regulation 24 makes provision for the duties which apply to a mental health officer.

Regulation 25 makes provision for an assessment to be carried out on any patient received in Scotland by the responsible medical officer within 7 days of the patient's arrival which includes a medical examination and consideration of the appropriateness of the measures under the 2003 Act or the 1995 Act to which the patient has become treated as if subject.

Regulations 26 and 27 provide that where a responsible medical officer has assessed a patient who is treated as being subject to a compulsory treatment order or a compulsion order and is not satisfied that the patient meets the appropriate criteria, the responsible medical officer shall revoke the order.

Regulation 28 provides for the responsible medical officer to report to the managers of the receiving hospital on the patient's mental disorder and whether it is necessary for measures under the 2003 Act or the 1995 Act to continue to be applied. The managers of the receiving hospital shall then notify the parties listed in that regulation of the matters specified.

Regulation 29 provides for the application of the relevant sections of the 2003 Act on the preparation of care plans to apply to patients received in Scotland.

Regulation 30 applies section 260 of the 2003 Act to such patients to provide for information to be provided to those patients.

Regulation 31 provides for assistance to patients with communication difficulties.

Regulation 32 provides for patients to be visited by the Commission within six months of their transfer.

Regulation 33 makes provision for the 2003 Act and the 1995 Act to apply to patients received in Scotland subject to the modifications made in this instrument.

Regulation 34 amends the Mental Health (Absconding by mentally disordered offenders) (Scotland) Regulations 2005 to expand the circumstances in which a patient is liable to be taken into custody to include when a patient absconds while being removed from Scotland by virtue of regulations made under section 289 of the 2003 Act.

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A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on costs to business.