
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations make provision about the transfer to and from Scotland of mental health patients who are subject to a detention requirement or are otherwise in hospital.

In this note, “the principal Regulations” means the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005.

Transfers of patients from Scotland

Extending range of people informed about and able to appeal transfer

In its unamended form, regulation 13 of the principal Regulations gives the patient alone a right to appeal to the Mental Health Tribunal for Scotland against a decision to transfer the patient out of Scotland.

Regulation 15 amends the principal Regulations so as to extend that right of appeal to the patient’s named person.

Regulation 16 further amends the principal Regulations so that in a case where the patient does not have a named person an appeal to the Tribunal may, in certain circumstances, be initiated by the patient’s primary carer, nearest relative, guardian or welfare attorney.

Regulations 18 and 19 amend the principal Regulations so that named persons and (in certain circumstances) primary carers, relatives, guardians and welfare attorneys can take a further appeal from a decision of the Tribunal under regulation 13 to the courts.

Regulations 7, 8, 11(2), 12(3) and 21 amend the principal Regulations so that people who may have an appeal right by virtue of the regulations mentioned above are given information at various points in the transfer process leading up to the patient’s removal from Scotland. Regulation 11(3) ensures those people are informed that they may be able to appeal against a transfer decision.

Regulations 7(3) and 10 provide for those people to be able to make representations to the Scottish Ministers directly ahead of the Ministers deciding whether or not to authorise a patient’s transfer.

For definitions of the terms “named person”, “primary carer”, “guardian” and “welfare attorney” see section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003. The term “nearest relative” is defined by section 254 of that Act.

Removal warrants

Regulations 9 and 13 concern the period during which a warrant authorising a patient’s removal from Scotland can and cannot be executed.

Regulations 12(2), 14 and 20 revoke provisions of the principal Regulations which are made defunct by the new provisions inserted into the principal Regulations by regulation 13.

Notifications to the Scottish Ministers

Regulation 17 amends the principal Regulations to place the Tribunal under a duty to keep the Scottish Ministers apprised of the making and determination of appeals under regulation 13 of the principal Regulations.

Regulation 22 amends regulation 20 of the principal Regulations so that the Scottish Ministers must be notified whenever a patient is transferred out of Scotland. In its unamended form, regulation 20

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of the principal Regulations required the giving of notification to the Scottish Ministers in some cases only.

Saving provision

Subject to one exception, regulation 4 provides that the amendments made to the principal Regulations concerning the transfer of patients from Scotland do not affect cases where the transfer process had begun in earnest before 30th June 2017 (being the date on which the amendments come into force). In a case where, before that date, the transfer process had reached the stage of notice being sent under regulation 5 of the principal Regulations (which means the notice was sent in accordance with that regulation in its unamended form) the whole transfer process will be dealt with in accordance with the principal Regulations in their unamended form.

The exception to the general effect of regulation 4 is regulation 22. The amendment it makes to regulation 20 of the principal Regulations will apply in all cases where a patient is transferred from Scotland after the date the Regulations' come into force regardless of when the transfer process began.

Transfer of patients into Scotland

Transfers from other EU States

The principal Regulations provide for a patient from a 'relevant territory' to be transferred to a hospital in Scotland. Prior to regulation 6 coming into force, the principal Regulations defined 'relevant territory' to mean the other parts of the United Kingdom, any of the Channel Islands and the Isle of Man. Regulation 6 extends the definition of 'relevant territory' so that patients can be transferred into Scotland from other European Union member States too.

Requirements for request for consent to transfer

Regulation 23 amends the principal Regulations so that requests for consent to transfer a patient into Scotland have to include details of any guardian or welfare attorney appointed to the patient.

Regulation 5 stops the amendment made by regulation 23 from applying to requests for consent made before the Regulations come into force. This means that a request will not be ignored because it does not include details of a patient's guardian or welfare attorney if the request was made before it became a requirement for those details to be included.

Appeal against compulsory treatment order following transfer

Regulation 24 amends the principal Regulations so that a patient who has been transferred into Scotland and is being treated as if subject to a compulsory treatment order can appeal to the Mental Health Tribunal for Scotland against the order earlier than would be the case had the patient become subject to a compulsory treatment order on the transfer date under the ordinary domestic process (as opposed to the cross-border transfer process).

Conflicts of interest

Regulations 25 and 26 amend the principal Regulations in consequence of the revocation of the Mental Health (Conflict of Interest) (Scotland) (No. 2) Regulations 2005⁽¹⁾ by the Mental Health (Conflict of Interest) (Scotland) Regulations 2017.

Minor correction to regulation 38 of the principal Regulations

Regulation 27 corrects an inaccurate cross-reference in regulation 38 of the principal Regulations.

Notice following transfer

Under regulation 41 of the principal Regulations, following a patient's transfer into Scotland the managers of the hospital in which the patient is detained must give notice of various things (including the date on which the transfer took place) to certain persons. Regulation 28 extends the list of persons

(1) [S.S.I. 2005/380](#).

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to whom that notice is to be given to include any guardian or welfare attorney of the patient and, unless the patient objects, the patient's nearest relative and primary carer.

Mental Welfare Commission visits following transfer

Regulation 45 of the principal Regulations placed the Mental Welfare Commission for Scotland under a duty to arrange a visit to every patient transferred into Scotland within 6 months of the transfer taking place. That duty is abolished by regulation 29.

The Commission continues to have the power under section 13 of the Mental Health (Care and Treatment) (Scotland) Act 2003 to arrange for a visit to be made to a patient transferred into Scotland at any time the Commission considers appropriate.