Mental Health Act 1983

1983 CHAPTER 20

PART VI

REMOVAL AND RETURN OF PATIENTS WITHIN UNITED KINGDOM, ETC.

Removal to Scotland

80 Removal of patients to Scotland.

(1) If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained or subject to guardianship under this Act (otherwise than by virtue of section 35, 36 or 38 above), that it is in the interests of the patient to remove him to Scotland, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, the Secretary of State may authorise his removal to Scotland and may give any necessary directions for his conveyance to his destination.

(2) Subject to the provisions of subsection (4) below, where a patient liable to be detained under this Act by virtue of an application, order or direction under any enactment in force in England and Wales is removed under this section and admitted to a hospital in Scotland, he shall be treated as if on the date of his admission he had been so admitted in pursuance of an application forwarded to the Health Board responsible for the administration of the hospital, or an order or direction made or given, on that date under the corresponding enactment in Scotland, and, where he is subject to a restriction order or restriction direction under any enactment in this Act, as if he were subject to **[**[F1]a restriction order or restriction**]** direction under the corresponding enactment in force in Scotland.

(3) Where a patient subject to guardianship under this Act by virtue of an application, order or direction under any enactment in force in England and Wales is removed under this section and received into guardianship in Scotland, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application, order or direction under the corresponding

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enactment in force in Scotland, and as if the application had been forwarded or, as the case may be, the order or direction had been made or given on that date.

(4) Where a person removed under this section was immediately before his removal liable to be detained by virtue of an application for admission for assessment under this Act, he shall, on his admission to a hospital in Scotland, be treated as if he had been admitted to the hospital in pursuance of an emergency recommendation under the **[**[F2]Mental Health (Scotland) Act 1984**]** made on the date of his admission.

(5) Where a patient removed under this section was immediately before his removal liable to be detained under this Act by virtue of a transfer direction given while he was serving a sentence of imprisonment (within the meaning of section 47(5) above) imposed by a court in England and Wales, he shall be treated as if the sentence had been imposed by a court in Scotland.

(6) Where a person removed under this section was immediately before his removal subject to a restriction order or restriction direction of limited duration, **[**[F3]the restriction order or restriction direction to which he is subject by virtue of subsection (2) of this section shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed.**]**

(7) In this section "hospital" has the same meaning as in the **[**[F4]Mental Health (Scotland) Act 1984**]**.

Textual Amendments

F1 Words substituted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), s. 41(2), Sch. 1 para. 2, **Sch. 2 para. 1**(*a*) and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)**(*d*)

F2 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), ss. 17(2), 127, **Sch. 3 para. 51**

F3 Words substituted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), s. 41(2), Sch. 1 para 2, **Sch. 2 para. 1**(*b*) and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)**(*d*)

F4 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), ss. 17(2), 127, **Sch. 3 para. 51**

VALID FROM 03/11/2008

[[F5]80ZA Transfer of responsibility for community patients to Scotland

(1) If it appears to the appropriate national authority, in the case of a community patient, that the conditions mentioned in subsection (2) below are met, the authority may authorise the transfer of responsibility for him to Scotland.

(2) The conditions are—

(a) a transfer under this section is in the patient's interests; and

(b) arrangements have been made for dealing with him under enactments in force in Scotland corresponding or similar to those relating to community patients in this Act.

(3) The appropriate national authority may not act under subsection (1) above while the patient is recalled to hospital under section 17E above.

(4) In this section, "the appropriate national authority" means—

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(a) in relation to a community patient in respect of whom the responsible hospital is in England, the Secretary of State;

(b) in relation to a community patient in respect of whom the responsible hospital is in Wales, the Welsh Ministers.**]**

Textual Amendments

F5 S. 80ZA inserted (E.W.) (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 3** (with Sch. 10); S.I. 2008/1900, **art. 2(n)** (with art. 3, Sch.)

VALID FROM 01/10/1997

[F6 80A Transfer of responsibility for patients to Scotland.

(1) If it appears to the Secretary of State, in the case of a patient who—

(a) is subject to a restriction order under section 41 above; and

(b) has been conditionally discharged under section 42 or 73 above,

that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the Minister exercising corresponding functions in Scotland, transfer responsibility for the patient to that Minister.

(2) Where responsibility for such a patient is transferred under this section, the patient shall be treated—

(a) as if on the date of the transfer he had been conditionally discharged under the corresponding enactment in force in Scotland; and

(b) as if he were subject to a restriction order under the corresponding enactment in force in Scotland.

(3) Where a patient responsibility for whom is transferred under this section was immediately before the transfer subject to a restriction order of limited duration, the restriction order to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order would have expired if the transfer had not been made.**]**

Textual Amendments

F6 S. 80A inserted (E.W.S.) (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3 para. 1**; S.I. 1997/2200, **art. 2**

VALID FROM 03/11/2008

[F7 80B Removal of detained patients from Scotland

(1) This section applies to a patient if—

(a) he is removed to England and Wales under regulations made under section 290(1)(a) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”);

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(b) immediately before his removal, his detention in hospital was authorised by virtue of that Act or the Criminal Procedure (Scotland) Act 1995; and

(c) on his removal, he is admitted to a hospital in England or Wales.

(2) He shall be treated as if, on the date of his admission to the hospital, he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the enactment in force in England and Wales which most closely corresponds to the enactment by virtue of which his detention in hospital was authorised immediately before his removal.

(3) If, immediately before his removal, he was subject to a measure under any enactment in force in Scotland restricting his discharge, he shall be treated as if he were subject to an order or direction under the enactment in force in England and Wales which most closely corresponds to that enactment.

(4) If, immediately before his removal, the patient was liable to be detained under the 2003 Act by virtue of a transfer for treatment direction, given while he was serving a sentence of imprisonment (within the meaning of section 136(9) of that Act) imposed by a court in Scotland, he shall be treated as if the sentence had been imposed by a court in England and Wales.

(5) If, immediately before his removal, the patient was subject to a hospital direction or transfer for treatment direction, the restriction direction to which he is subject by virtue of subsection (3) above shall expire on the date on which that hospital direction or transfer for treatment direction (as the case may be) would have expired if he had not been so removed.

(6) If, immediately before his removal, the patient was liable to be detained under the 2003 Act by virtue of a hospital direction, he shall be treated as if any sentence of imprisonment passed at the time when that hospital direction was made had been imposed by a court in England and Wales.

(7) Any directions given by the Scottish Ministers under regulations made under section 290 of the 2003 Act as to the removal of a patient to which this section applies shall have effect as if they were given under this Act.

(8) Subsection (8) of section 80 above applies to a reference in this section as it applies to one in that section.

(9) In this section—

"hospital direction" means a direction made under section 59A of the Criminal Procedure (Scotland) Act 1995; and

"transfer for treatment direction" has the meaning given by section 136 of the 2003 Act.]

Textual Amendments

F7 S. 80B inserted (E.W.) (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 4** (with Sch. 10); S.I. 2008/1900, **art. 2(n)** (with art. 3, Sch.)

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VALID FROM 03/11/2008

[F8 80C Removal of patients subject to compulsion in the community from Scotland

(1) This section applies to a patient if—

(a) he is subject to an enactment in force in Scotland by virtue of which regulations under section 289(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 apply to him; and

(b) he is removed to England and Wales under those regulations.

(2) He shall be treated as if on the date of his arrival at the place where he is to reside in England or Wales—

(a) he had been admitted to a hospital in England or Wales in pursuance of an application or order made on that date under the corresponding enactment; and

(b) a community treatment order had then been made discharging him from the hospital.

(3) For these purposes—

(a) if the enactment to which the patient was subject in Scotland was an enactment contained in the Mental Health (Care and Treatment) (Scotland) Act 2003, the corresponding enactment is section 3 of this Act;

(b) if the enactment to which he was subject in Scotland was an enactment contained in the Criminal Procedure (Scotland) Act 1995, the corresponding enactment is section 37 of this Act.

(4) "The responsible hospital, in the case of a patient in respect of whom a community treatment order is in force by virtue of subsection (2) above, means the hospital to which he is treated as having been admitted by virtue of that subsection, subject to section 19A above.

(5) As soon as practicable after the patient's arrival at the place where he is to reside in England or Wales, the responsible clinician shall specify the conditions to which he is to be subject for the purposes of section 17B(1) above, and the conditions shall be deemed to be specified in the community treatment order.

(6) But the responsible clinician may only specify conditions under subsection (5) above which an approved mental health professional agrees should be specified.]

Textual Amendments

F8 S. 80C inserted (E.W.) (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 4** (with Sch. 10); S.I. 2008/1900, **art. 2(n)** (with art. 3, Sch.)

VALID FROM 01/10/2007

[F9 80D Transfer of conditionally discharged patients from Scotland

(1) This section applies to a patient who is subject to—

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(a) a restriction order under section 59 of the Criminal Procedure (Scotland) Act 1995; and

(b) a conditional discharge under section 193(7) of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act").

(2) A transfer of the patient to England and Wales under regulations made under section 290 of the 2003 Act shall have effect only if the Secretary of State has consented to the transfer.

(3) If a transfer under those regulations has effect, the patient shall be treated as if—

(a) on the date of the transfer he had been conditionally discharged under section 42 or 73 above; and

(b) he were subject to a hospital order under section 37 above and a restriction order under section 41 above.

(4) If the restriction order to which the patient was subject immediately before the transfer was of limited duration, the restriction order to which he is subject by virtue of subsection (3) above shall expire on the date on which the first-mentioned order would have expired if the transfer had not been made.**]**

Textual Amendments

F9 S. 80D inserted (E.W.) (1.10.2007) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 4** (with Sch. 10); S.I. 2007/2798, **art. 2(c)(i)**

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