



Mental Health Act 1959

1959 CHAPTER 72

PART VI

REMOVAL AND RETURN OF PATIENTS WITHIN UNITED KINGDOM, ETC.

Removal to and from Scotland

81 Removal to Scotland of patients not subject to restriction

- (1) If it appears to the Minister, in the case of a patient who is for the time being liable to be detained or subject to guardianship under this Act, being—
- (a) a patient who is so liable or subject by virtue of an application under Part IV of this Act;
 - (b) a patient who is so liable or subject by virtue of a hospital order or transfer direction without an order or direction restricting discharge;
 - (c) a patient who is so liable or subject by virtue of a guardianship order or a direction under section seventy-nine of this Act,

that it is in the patient's interests to remove him to Scotland, and that arrangements have been made for his reception into a mental hospital, asylum or house in Scotland where persons of unsound mind may be detained under the Lunacy (Scotland) Acts, 1857 to 1913, or for placing him in an institution for defectives or under guardianship within the meaning of the Mental Deficiency and Lunacy (Scotland) Act, 1913, the Minister may authorise the removal of the patient to Scotland and give any necessary directions for his conveyance to his destination.

- (2) Where a person removed in pursuance of an authority under this section is received into any such hospital, asylum or house as is mentioned in subsection (1) of this section, then—
- (a) if, immediately before his removal, he was liable to be detained in a hospital within the meaning of Part IV of this Act, he shall on his reception be treated for all purposes as having been so received by virtue of an order under section fourteen of the Lunacy (Scotland) Act, 1862;

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- (b) if, immediately before his removal, he was subject to guardianship under this Act, he shall on his reception be treated for all purposes as a person in whose case an order under section thirteen of the Lunacy (Scotland) Act, 1866 is in force ;

and for the purposes of paragraph (b) of subsection (1) of section nine of the said Act of 1866 the person entitled to discharge a patient transferred to Scotland under the foregoing provisions of this section shall be ascertained as if the person at whose instance he is detained were dead.

- (3) Where a person removed in pursuance of an authority under this section is placed in an institution for defectives or under guardianship within the meaning of the Mental Deficiency and Lunacy (Scotland) Act, 1913, then—
- (a) if before the removal the patient was liable to be detained or subject to guardianship as mentioned in paragraph (a) of subsection (1) of this section, he shall on being so placed be treated for all purposes as having been so placed by his parent or guardian under section four of that Act;
- (b) if before the removal the patient was liable to be detained or subject to guardianship as mentioned in paragraph (b) or paragraph (c) of the said subsection (1), he shall on being so placed be treated for all purposes as if he were detained in the institution or placed under guardianship in pursuance of a judicial order under section seven of the Mental Deficiency and Lunacy (Scotland) Act, 1913, made on the date on which he is so placed.

82 Removal to Scotland of patients subject to restriction on discharge

- (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 by virtue of an order or direction under Part V of this Act, not being a patient to whom section eighty-one of this Act applies, that it is in the patient's interests to remove him to Scotland and that arrangements have been made for him in accordance with the following provisions of this section, the Secretary of State may by warrant authorise the removal of the patient to Scotland, and may give any necessary directions for his conveyance to his destination.
- (2) Where the patient is liable to be detained by virtue of a hospital order and an order restricting his discharge is in force, arrangements may be made for his reception into a State Mental Hospital within the meaning of the Criminal Justice (Scotland) Act, 1949, or a mental hospital, asylum or house where persons of unsound mind may be detained in pursuance of an order under section fourteen of the Lunacy (Scotland) Act, 1862, or for placing him in a State institution within the meaning of section twenty-eight of the Mental Deficiency and Lunacy (Scotland) Act, 1913.
- (3) Where the patient is liable to be detained by virtue of a transfer direction and a direction restricting his discharge is in force, arrangements may be made for his reception into a hospital eligible to receive patients under section six of the Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871, or under subsection (1) of section four of the Criminal Lunatics (Scotland) Act, 1935, or for placing him in an institution for defectives within the meaning of the Mental Deficiency and Lunacy (Scotland) Act, 1913.
- (4) Where the patient is liable to be detained in a hospital by virtue of a direction under section seventy-one of this Act, arrangements may be made for his reception into a State Mental Hospital within the meaning of the Criminal Justice (Scotland) Act, 1949,

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or a mental hospital, asylum or house where persons of unsound mind may be detained in pursuance of an order under section fourteen of the Lunacy (Scotland) Act, 1862.

83 Application of Scottish enactments to patients removed under s. 82

(1) Where a patient is removed to Scotland in pursuance of such arrangements as are mentioned in subsection (2) of section eighty-two of this Act, then—

- (a) if in pursuance of those arrangements he is received into a mental hospital, asylum or house where persons of unsound mind may be detained in pursuance of an order under section fourteen of the Lunacy (Scotland) Act, 1862, subsection (2) of section eighty-one of this Act shall apply to him as it applies to a patient removed under that section to such a hospital, asylum or house as aforesaid, but, unless the Secretary of State otherwise directs, any power to discharge the patient, to grant him leave of absence or to transfer him from the hospital, asylum or house shall, so long as the order restricting the discharge of the patient would have continued in force apart from his removal, be exercisable only with the consent of the Secretary of State ;
- (b) if in pursuance of those arrangements he is placed in a State institution, he shall be treated as if he were detained therein in pursuance of a judicial order under section seven of the Mental Deficiency and Lunacy (Scotland) Act, 1913, made on the date on which he is so placed;

and for the purposes of paragraph (a) of this subsection any reference in section fourteen of the Lunacy (Scotland) Act, 1862, to a mental hospital shall be construed as including a reference to a State Mental Hospital.

(2) Where a patient is removed in pursuance of such arrangements as are mentioned in subsection (3) of the said section eighty-two, then—

- (a) if in pursuance of those arrangements he is received into a hospital being a State Mental Hospital, he shall be treated as if he had been ordered to be detained therein under subsection (1) of section four of the Criminal Lunatics (Scotland) Act, 1935 ;
- (b) if in pursuance of those arrangements he is detained in any other hospital described in that subsection, he shall be treated as if he had been ordered to be removed to that hospital under section six of the Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871 ;
- (c) if in pursuance of those arrangements he is removed to an institution for defectives, he shall be treated as if he were detained under an order for his transfer to that institution made under section ten of the Mental Deficiency and Lunacy (Scotland) Act, 1913, on the date of his removal;

and in any such case the patient shall be treated as if the sentence or order by virtue of which he was detained before the transfer direction was given had been imposed or made by a court in Scotland.

(3) Where a patient is removed in pursuance of such arrangements as are mentioned in subsection (4) of the said section eighty-two, the patient shall be treated as if he had been ordered by a court in Scotland to be kept in strict custody until Her Majesty's pleasure shall be known in pursuance of section eighty-seven or section eighty-eight of the Lunacy (Scotland) Act, 1857, and as if an order for his safe custody in the place of reception had been made on behalf of Her Majesty under the said section eighty-seven or the said section eighty-eight.

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84 Removal to England and Wales of state mental patients

- (1) In subsection (2) of section sixty-four of the Criminal Justice (Scotland) Act, 1949 (which provides for the removal of state mental patients from mental hospitals in Scotland to mental hospitals in England and Wales) the reference to a mental hospital in England shall be construed as a reference to any hospital within the meaning of this Act,
- (2) Where, under the said subsection (2) an order is made by the Secretary of State for the removal of a state mental patient from a mental hospital in Scotland to a hospital in England and Wales, then—
 - (a) if the patient is a person ordered to be kept in safe custody during Her Majesty's pleasure in pursuance of section eighty-seven or section eighty-eight of the Lunacy (Scotland) Act, 1857, the patient shall, on his reception into the hospital in England and Wales, be treated as if he had been removed to that hospital in pursuance of a direction of the Secretary of State under section seventy-one of this Act;
 - (b) in any other case, the patient shall be treated, on his reception into the hospital in England and Wales, as if he had been removed to that hospital in pursuance of a transfer direction under Part V of this Act, and a direction restricting his discharge may be given under section seventy-four of this Act accordingly;

and in any such case the patient shall be treated as if the sentence or order by virtue of which he was detained before being removed under this section had been imposed or made by a court in England and Wales.