



# Mental Health (Care and Treatment) (Scotland) Act 2003

## 2003 asp 13

### PART 18

#### MISCELLANEOUS

##### *Cross-border transfer of patients*

#### **289 Cross-border transfer: patients subject to requirement other than detention**

- (1) Regulations may make provision for or in connection with
- (a) <sup>F1</sup>the removal of a patient subject to a relevant requirement from Scotland to a place outwith Scotland (whether or not a place in the United Kingdom).]
  - <sup>F2</sup>(b) the reception in Scotland of
    - [ a person subject to corresponding requirements in England, Wales, <sup>F3</sup>(i) Northern Ireland, the Isle of Man or the Channel Islands and removed from there.]
    - <sup>F4</sup>(ii) a person subject to corresponding requirements in a member State of the European Union (apart from the United Kingdom) and removed from that State.]
- (2) Where <sup>F5</sup>provision is made by regulations under paragraph (a) of subsection (1) above], the regulations shall—
- (a) require a patient's removal to be authorised by warrant issued by the patient's responsible medical officer;
  - (b) provide that a responsible medical officer may give that authority only—
    - (i) where the patient has notified the responsible medical officer of the patient's wish to be so removed; or
    - (ii) where, in the case where the patient is not capable of giving that notification, the patient's named person has notified the responsible medical officer that that person considers that it is in the patient's best interests to be so removed;
  - (c) provide that the responsible medical officer may give that authority only if satisfied that there are in existence, in the place to which the patient is to

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go after being so removed, arrangements which will secure for the patient measures, treatment, care or services corresponding or similar to those which the patient is subject to or is receiving by virtue of this Act or, as the case may be, the 1995 Act;

- (d) require a patient's responsible medical officer, before making a decision whether to authorise the removal of the patient, to notify—
  - (i) except where notification referred to in paragraph (b) above has been given by the patient's named person, that person;
  - (ii) the mental health officer; and
  - (iii) the Commission,
 of the circumstances of the case; and
- (e) authorise a patient's responsible medical officer to give directions in connection with the removal of the patient.

[<sup>F6</sup>(2XA) Where provision is made by regulations under paragraph (a) of subsection (1) above, the regulations may make provision for exceptions to provisions included in them by virtue of subsection (2)(d).

(2YA) Where provision is made by regulations under paragraph (b) of subsection (1) above, the regulations shall provide for the reception of persons to take place only if—

- (a) the managers of a hospital consent to the reception; and
- (b) those managers undertake to appoint an approved medical practitioner to be the person's responsible medical officer.

(2ZA) Regulations under subsection (1) above may in particular—

- (a) make provision for things done under the law of a territory other than Scotland to be treated as things done under provisions of the law of Scotland,
- (b) confer powers and immunities on persons engaged in—
  - (i) escorting persons being moved under the regulations;
  - (ii) pursuing persons who have absconded while being so moved;
  - (iii) restraining persons who have absconded, or attempt to abscond, while being so moved;]
- (c) make provision amending provisions of this Act (other than this section) or any other enactment, or providing for any such provision or enactment to have effect with modification.

[<sup>F7</sup>(2A) [<sup>F8</sup>Subsections (2) to (2ZA) above are] without prejudice to the generality of the powers conferred by subsection (1) above.]

(3) References in this section to—

- (a)
- (b) a relevant requirement are, as respects a patient, references to a requirement imposed in relation to the patient under section 66(1) of this Act or section 57A(8) of the 1995 Act, not being detention in a hospital;

a patient subject to a relevant requirement include references to a patient in respect of whom section 128(1) (either as enacted or as applied by section 179 of this Act) is in operation.

[<sup>F9</sup>(4) For the purposes of subsection (1)(b) above, a person is subject to “corresponding requirements” in a territory if under the law of that territory the person is subject to measures corresponding or similar to a requirement imposed in relation to a person

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under section 66(1) of this Act or section 57A(8) of the 1995 Act, not being detention in a hospital.]

#### Textual Amendments

- F1** Words in s. 289(1) renumbered as s. 289(1)(a) (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(1)(a)(i)**, 79(3); S.S.I. 2007/334, art. 2(a), sch. 1
- F2** S. 289(1)(b) inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(1)(a)(ii)**, 79(3); S.S.I. 2007/334, art. 2(a), sch. 1
- F3** Words in s. 289(1)(b) renumbered as s. 289(1)(b)(i) (5.5.2017 for specified purposes, 30.6.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 32(2)(a)**, 61(2); S.S.I. 2017/126, art. 2, sch.; S.S.I. 2017/197, art. 2, sch.
- F4** S. 289(1)(b)(ii) inserted (5.5.2017 for specified purposes, 30.6.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 32(2)(b)**, 61(2); S.S.I. 2017/126, art. 2, sch.; S.S.I. 2017/197, art. 2, sch.
- F5** Words in s. 289(2) substituted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(1)(b)**, 79(3); S.S.I. 2007/334, art. 2(a), sch. 1
- F6** S. 289(2XA)-(2ZA) inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(1)(c)**, 79(3); S.S.I. 2007/334, art. 2(a), sch. 1
- F7** S. 289(2A) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(9)**
- F8** Words in s. 289(2A) substituted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(1)(d)**, 79(3); S.S.I. 2007/334, art. 2(a), sch. 1
- F9** S. 289(4) inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 71(1)(e)**, 79(3); S.S.I. 2007/334, art. 2(a), sch. 1

#### Commencement Information

- I1** S. 289 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**
- I2** S. 289 in force at 5.10.2005 in so far as not already in force by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

## 290 Cross-border transfer: patients subject to detention requirement or otherwise in hospital

- (1) Regulations may make provision for or in connection with—
- the removal, of a patient whose detention in hospital is authorised by virtue of this Act or the 1995 Act, from Scotland to a place outwith Scotland (whether or not a place in the United Kingdom);
  - the removal, of a patient who for the purposes of being given treatment for mental disorder is in hospital otherwise than by virtue of this Act or the 1995 Act, from Scotland to a place outwith the United Kingdom;
  - the reception in Scotland of
    - <sup>F10</sup>(i) a person subject to corresponding measures in England, Wales, Northern Ireland, the Isle of Man or the Channel Islands and removed from there.
    - <sup>F11</sup>(ii) a person subject to corresponding measures in a member State of the European Union (apart from the United Kingdom) and removed from that State.]
- (2) Where provision is made by regulations under paragraph (a) or (b) of subsection (1) above, the regulations shall—

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Cross-border transfer of patients is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (a) require a patient's removal from Scotland to be authorised by warrant issued by the Scottish Ministers;
  - (b) require that, among the factors to which the Scottish Ministers have regard in deciding whether to authorise that removal, there are included, as well as the best interests of the patient, the following—
    - (i) the existence, in the place to which a patient is to go after being removed from Scotland, of arrangements which will secure for the patient [<sup>F12</sup>, in the case of paragraph (a) of subsection (1) above,] measures, treatment, care or services corresponding or similar to those to which the patient is subject or is receiving by virtue of this Act or, as the case may be, the 1995 Act [<sup>F13</sup> or, in the case of paragraph (b) of subsection (1) above, treatment for mental disorder corresponding or similar to that which the patient is receiving in hospital];
    - (ii) any wish or preference as to the patient's removal from Scotland of which the patient has given notice to the Scottish Ministers; and
    - (iii) any risk to the safety of any person;
  - (c) require notice to be given to—
    - (i) the patient;
    - (ii) the patient's named person;
    - (iii) the mental health officer; and
    - (iv) the Commission,
 of any decision that the patient be removed from Scotland under the regulations;
  - (d) require any such giving of notice to be effected, in a case where removal is to a place in the United Kingdom, at least 7 days before the date proposed for the patient's removal;
  - (e) require any such giving of notice to be effected, in a case where removal is to a place outwith the United Kingdom, at least 28 days before the date proposed for the patient's removal;
  - [<sup>F14</sup>(f) enable an appeal against any such decision to be made by—
    - (i) such a patient,
    - (ii) the named person of such a patient,
    - (iii) if such a patient has no named person—
      - any guardian of such a patient,
      - any welfare attorney of such a patient,
      - the primary carer (if any) of such a patient,
      - the nearest relative of such a patient;]
  - (g) provide for such a patient's removal not to take place until proceedings on any such appeal have been concluded.
- (3) Where provision is made by regulations under paragraph (a) or (b) of subsection (1) above, the regulations may make provision for exceptions to provisions included in them by virtue of subsection (2)(c), (d), (e) or (g) above.
- (4) Where provision is made by regulations under paragraph (c) of subsection (1) above, the regulations shall provide for the reception of patients in Scotland to take place only with the consent of the Scottish Ministers.
- (5) Regulations under subsection (1) above may in particular—

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- (a) make provision for things done under the law of a territory other than Scotland to be treated as things done under provisions of the law of Scotland;
  - (b) confer powers and immunities on persons engaged in—
    - (i) escorting persons being moved under the regulations;
    - (ii) pursuing persons who have absconded while being so moved;
    - (iii) restraining persons who have absconded, or attempt to abscond, while being so moved;
  - (c) authorise the Scottish Ministers to arrange for any of their functions under the regulations to be exercised by other persons;
  - (d) authorise the Scottish Ministers to give directions in connection with removals of persons under the regulations or any particular such removal or removals;
  - (e) make provision amending provisions of this Act (other than this section) or any other enactment, or providing for any such provision or enactment to have effect with modification.
- (6) Subsections (2) to (5) above are without prejudice to the generality of the powers conferred by subsection (1) above.
- (7) References in this section to a patient whose detention in hospital is authorised by virtue of this Act or the 1995 Act include references to a patient—
- (a) in respect of whom a certificate under section 41(1), 53(1), 127(1) or (3) (either as enacted or as applied by section 179 of this Act), 221(2) or 224(2) of this Act is in operation; or
  - (b) who has been conditionally discharged under section 193(7) of this Act and not recalled under section 202 of this Act.
- (8) For the purposes of paragraph (c) of subsection (1) above, a person is subject to “corresponding measures” in a territory if under the law of that territory the person—
- (a) is subject to measures corresponding or similar to detention in hospital authorised by virtue of this Act or the 1995 Act; or
  - (b) has a status corresponding or similar to that of a patient such as is mentioned in paragraph (b) of that subsection.

#### Textual Amendments

- F10** Words in s. 290(1)(c) renumbered as s. 290(1)(c)(i) (5.5.2017 for specified purposes, 30.6.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 32(3)(a)(i)**, 61(2); S.S.I. 2017/126, art. 2, sch.; S.S.I. 2017/197, art. 2, sch.
- F11** S. 290(1)(c)(ii) inserted (5.5.2017 for specified purposes, 30.6.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 32(3)(a)(ii)**, 61(2); S.S.I. 2017/126, art. 2, sch.; S.S.I. 2017/197, art. 2, sch.
- F12** Words in s. 290(2)(b)(i) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(10)(a)**
- F13** Words in s. 290(2)(b)(i) inserted (2.12.2004) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 Modification Order 2004 \(S.S.I. 2004/533\)](#), arts. 1, **2(10)(b)**
- F14** S. 290(2)(f) substituted (5.5.2017 for specified purposes, 30.6.2017 in so far as not already in force) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 32(3)(b)**, 61(2); S.S.I. 2017/126, art. 2, sch.; S.S.I. 2017/197, art. 2, sch.

#### Commencement Information

- I3** S. 290 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Cross-border transfer of patients is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- I4** S. 290 in force at 5.10.2005 in so far as not already in force by [S.S.I. 2005/161, art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

**Changes to legislation:**

Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Cross-border transfer of patients is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)