



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 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).
- (2) Where that provision is made, 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 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.

(3) References in this section to—

- (a) 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;
- (b) 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.

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

(1) Regulations may make provision for or in connection with—

- (a) 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);
- (b) 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;
- (c) the reception in Scotland of a person subject to corresponding measures in England, Wales, Northern Ireland, the Isle of Man or the Channel Islands and removed from there.

(2) Where provision is made by regulations under paragraph (a) or (b) of subsection (1) above, the regulations shall—

- (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 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;

- (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;
 - (f) make provision for such a patient to be able to appeal against any such decision; and
 - (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—
 - (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.