



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

2003 asp 13

## PART 18

### MISCELLANEOUS

#### *Code of practice*

#### **274 Code of practice**

- (1) The Scottish Ministers shall, in accordance with this section, draw up, give effect to and publish a code of practice giving guidance to any person discharging functions by virtue of this Act as to—
  - (a) the discharge of such of those functions; and
  - (b) such matters arising in connection with the discharge of those functions, as they think fit.
- (2) The Scottish Ministers shall, before giving effect to a code of practice drawn up under subsection (1) above—
  - (a) consult such persons as they think fit; and
  - (b) lay a draft of the code before the Scottish Parliament.
- (3) A code of practice drawn up under subsection (1) above shall be given effect by being—
  - (a) confirmed by order made; and
  - (b) brought into force on a day appointed, by the Scottish Ministers.
- (4) Any person discharging functions by virtue of this Act shall have regard (so far as they are applicable to the discharge of those functions by that person) to the provisions of any code of practice published under subsection (1) above for the time being in force.
- (5) The references in subsections (1) and (4) above to a person discharging functions by virtue of this Act do not include references to—

- (a) any court;
  - (b) the Tribunal; and
  - (c) the Commission.
- (6) The Scottish Ministers may, from time to time, revise the whole or part of any code of practice published under subsection (1) above; and if a code is so revised, the Scottish Ministers shall publish the revised code.
- (7) Subsections (2) to (6) above apply to a code of practice revised under subsection (6) above as they apply to a code of practice published under subsection (1) above.

#### *Advance statements*

### **275 Advance statements: making and withdrawal**

- (1) An “advance statement” is a statement complying with subsection (2) below and specifying—
- (a) the ways the person making it wishes to be treated for mental disorder;
  - (b) the ways the person wishes not to be so treated,
- in the event of the person’s becoming mentally disordered and the person’s ability to make decisions about the matters referred to in paragraphs (a) and (b) above being, because of that, significantly impaired.
- (2) An advance statement complies with this subsection if—
- (a) at the time of making it, the person has the capacity of properly intending the wishes specified in it;
  - (b) it is in writing;
  - (c) it is subscribed by the person making it;
  - (d) that person’s subscription of it is witnessed by a person (the “witness”) who is within the class of persons prescribed by regulations for the purposes of this paragraph and who signs the statement as a witness to that subscription; and
  - (e) the witness certifies in writing on the document which comprises the statement that, in the witness’s opinion, the person making the statement has the capacity referred to in paragraph (a) above.
- (3) An advance statement may be withdrawn by the person who made it by a withdrawal complying with this subsection; and a withdrawal so complies if—
- (a) at the time of making it the person has the capacity properly to intend to withdraw the statement; and
  - (b) it is made by means of a document which, were it an advance statement, would comply with paragraphs (b) to (e) of subsection (2) above.

### **276 Advance statements: effect**

- (1) If the Tribunal is satisfied as to the matters set out in subsection (2) below, it shall, in making any decision in respect of a patient who is a person who has made and not withdrawn an advance statement, have regard to the wishes specified in the statement.
- (2) Those matters are—
- (a) that, because of mental disorder, the ability of the person who made the advance statement to make decisions about the matters referred to in

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- paragraphs (a) and (b) of subsection (1) of section 275 of this Act is significantly impaired;
- (b) that the statement complies with subsection (2) of that section;
  - (c) that any measures or treatment which might or will be authorised by virtue of the decision referred to in subsection (1) above or might or will, by virtue of that decision, no longer be authorised correspond to any wishes specified in the statement; and
  - (d) that, since the person made the statement, there has been no change of circumstances which, were the person to have been considering making the statement at the time the Tribunal is making the decision referred to in subsection (1) above, would have been likely to cause the person not to make the statement or to make a substantially different one.
- (3) A person giving medical treatment authorised by virtue of this Act or the 1995 Act to a patient who is a person—
- (a) who has made and not withdrawn an advance statement; and
  - (b) whose ability to make decisions about the matters referred to in paragraphs (a) and (b) of subsection (1) of section 275 of this Act is, because of mental disorder, significantly impaired,
- shall have regard to the wishes specified in the advance statement.
- (4) Before making a decision under section 236(2)(c), 239(1)(c) or 241(1)(c) of this Act in relation to a patient who is a person who has made and not withdrawn an advance statement, a designated medical practitioner shall have regard to the wishes specified in the statement.
- (5) For the purposes of subsections (1) and (2) above and (in the case where medical treatment is to or might be given to a patient otherwise than by virtue of any such decision as is referred to in subsection (1) above or is to be given to the patient by virtue of such a decision which was made in ignorance of the existence or the withdrawal of an advance statement) of subsections (3) and (4) above—
- (a) an advance statement shall be taken to comply with subsection (2) of section 275 of this Act; and
  - (b) a withdrawal of an advance statement shall be taken to comply with subsection (3) of that section,
- unless the contrary appears.
- (6) For the purposes of subsections (3) and (4) above in the case where the medical treatment is authorised by virtue of a decision such as is referred to in subsection (1) above—
- (a) an advance statement shall be taken to comply with subsection (2) of section 275 of this Act; and
  - (b) a withdrawal of an advance statement shall be taken to comply with subsection (3) of that section,
- if the Tribunal was satisfied when making the decision that the statement or, as the case may be, the withdrawal so complies.
- (7) If, in respect of a patient who is a person who has made and not withdrawn an advance statement—
- (a) the Tribunal makes such a decision as is referred to in subsection (1) above authorising measures which conflict with the wishes specified in the statement;

- (b) a person having functions under this Act gives medical treatment authorised by virtue of this Act or the 1995 Act to the person and that treatment conflicts with those wishes;
- (c) a designated medical practitioner makes such a decision as is referred to in subsection (4) above and it conflicts with those wishes; or
- (d) such measures, treatment or decision which could have been so authorised, given or, as the case may be, made are not so authorised or is not so given or made, with the consequence that there is a conflict with those wishes,

then the Tribunal, person having those functions or, as the case may be, designated medical practitioner shall comply with the requirements set out in subsection (8) below.

(8) Those requirements are—

- (a) recording in writing the circumstances in which those measures were or treatment or decision was authorised, given or made or, as the case may be, not authorised, given or made, and the reasons why;
- (b) supplying—
  - (i) the person who made the statement;
  - (ii) that person's named person;
  - (iii) that person's welfare attorney;
  - (iv) that person's guardian; and
  - (v) the Commission,
 with a copy of that record; and
- (c) placing a copy of that record with that person's medical records.

### *Education*

## **277 Education of persons who have mental disorder**

- (1) The Education (Scotland) Act 1980 (c. 44) shall be amended as follows.
- (2) In section 14(1) (education for children unable to attend school by reason of extraordinary circumstances or prolonged ill-health), in paragraph (b) after “ill-health” there is inserted “or a pupil's being subject to any measures authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) or authorised, in consequence of the pupil's mental disorder, by virtue of the Criminal Procedure (Scotland) Act 1995 (c. 46)”.
- (3) In section 131(2) (persons to whom duties and powers under the Act do not extend), in paragraph (a) after “court” there is inserted “(other than an order so made under the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13))”.

### *Parental relations*

## **278 Duty to mitigate adverse effect of compulsory measures on parental relations**

- (1) Subsection (2) below applies—
  - (a) where—

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- (i) a child is subject to any measures authorised by virtue of this Act or authorised, in consequence of the child’s mental disorder, by virtue of the 1995 Act; and
  - (ii) the measures will or will be likely to impair the personal relations or diminish direct contact between the child and any person with parental responsibilities in relation to the child; or
- (b) where—
  - (i) a person with parental responsibilities in relation to a child is subject to any measures authorised by virtue of this Act or authorised, in consequence of the person’s mental disorder, by virtue of the 1995 Act; and
  - (ii) the measures will or will be likely to impair the personal relations or diminish direct contact between that person and the child.
- (2) Every person having functions by virtue of this Act which include responsibility for the administration of any of the measures mentioned in subsection (1) above shall take such steps as are practicable and appropriate to mitigate the impairment or diminution referred to in that subsection or, as the case may be, the likelihood of that impairment or diminution.
- (3) In this section, “child” and “parental responsibilities” have the same meanings as they have in Part I of the Children (Scotland) Act 1995 (c. 36).

### *Research*

## **279 Information for research**

- (1) A person having functions by virtue of this Act shall, on being required to do so by the Scottish Ministers—
  - (a) provide them or any other person specified in the requirement with such relevant information as is so specified; and
  - (b) do so in any such form as may be so specified.
- (2) The Scottish Ministers may, under subsection (1) above, require the provision of relevant information only if, in their opinion, it is needed by them (or, as the case may be, the other person specified in the requirement) for research purposes within the meaning given by section 33 of the Data Protection Act 1998 (c. 29) (research, history and statistics).
- (3) Information need not be provided under this section if, were it evidence which might be given in proceedings in any court in Scotland, the person having that evidence could not be compelled to give it in such proceedings.
- (4) Where information required under subsection (1) above—
  - (a) is, or refers to, information about a natural person and would identify or enable the identification of the person; and
  - (b) can reasonably be provided under subsection (1) above so as not to identify or enable the identification of the person,it shall be so provided.
- (5) Where—

- (a) the person required under subsection (1) above to provide the information is under a duty of confidentiality in respect of that information; and
  - (b) the person cannot provide the information without breaching the duty,

the information shall not be provided unless the person to whom the duty is owed has consented to its provision.
- (6) On receipt of information provided under this section, the Scottish Ministers (or any other person provided under this section with the information) may, for the purposes referred to in subsection (2) above, do any, or all, of the following—
  - (a) process the information;
  - (b) collate it;
  - (c) publish it or reports based on it.
- (7) Regulations may provide as to the procedure to be followed in making requirements under this section for information and in providing it.
- (8) Where information recorded otherwise than in legible form is required to be provided under this section, it shall be provided in legible form.
- (9) For the purposes of this section—
  - (a) information is “relevant” if it is information as to the operation of this Act; and
  - (b) a person is under a duty of confidentiality in respect of information although the person could notwithstanding that duty be compelled to give evidence as to that information in proceedings in a court in Scotland.

#### *State hospitals*

### **280      Restriction of Scottish Ministers' power to delegate management of state hospitals**

In section 102 of the National Health Service (Scotland) Act 1978 (c. 29) (provision and management of state hospitals)—

- (a) in subsection (4), paragraph (a) and the word “or” immediately following it; and
  - (b) subsection (5),
- shall cease to have effect.

#### *Communications, security etc.*

### **281      Correspondence of certain persons detained in hospital**

- (1) A postal packet which is—
  - (a) addressed to any person by a specified person; and
  - (b) delivered by the specified person for dispatch,

may, where subsection (2) or (3) below applies, be withheld from the relevant carrier by the managers of the hospital in which the specified person is detained.
- (2) This subsection applies if the person in question has requested that communications addressed to such person by the specified person should be withheld.
- (3) This subsection applies if—

- (a) the postal packet is not addressed to a person mentioned in subsection (5) below; and
  - (b) the managers of the hospital consider that the postal packet is likely—
    - (i) to cause distress to the person in question or any other person who is not on the staff of the hospital; or
    - (ii) to cause danger to any person.
- (4) Any request for the purposes of subsection (2) above shall be made in writing to—
  - (a) the managers of the hospital concerned;
  - (b) the responsible medical officer; or
  - (c) the Scottish Ministers.
- (5) The persons referred to in subsection (3)(a) above are—
  - (a) any Minister of the Crown or the Scottish Ministers;
  - (b) any member of either House of Parliament or member of the Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly;
  - (c) any member of the European Parliament elected for the United Kingdom;
  - (d) the Commission or any of its members;
  - (e) the Parliamentary Commissioner for Administration;
  - (f) the Scottish Public Services Ombudsman;
  - (g) a local authority;
  - (h) any judge or clerk of court;
  - (i) the Tribunal;
  - (j) the managers of the hospital in which the specified person is detained;
  - (k) a Health Board;
  - (l) a Special Health Board;
  - (m) a National Health Service trust;
  - (n) any person who, to the knowledge of the managers of the hospital in which the specified person is detained, is providing independent advocacy services to the specified person under section 259 of this Act;
  - (o) any legally qualified person instructed by the specified person to act as the specified person's legal adviser;
  - (p) the European Court of Human Rights; and
  - (q) such other persons as may be specified in regulations.
- (6) A postal packet which—
  - (a) is addressed to a specified person; and
  - (b) is not sent by or on behalf of any person mentioned in subsection (5) above,may be withheld from the specified person by the managers of the hospital in which the specified person is detained if, in their opinion, it is necessary to do so in the interests of the health or safety of the specified person or for the protection of any other person.
- (7) The managers of a hospital may inspect and open any postal packet for the purposes of determining—
  - (a) whether it is a postal packet to which subsection (1) or (6) above applies; and
  - (b) if it is, whether it should be withheld under the subsection in question.
- (8) The power to withhold a postal packet under subsection (1) or (6) above includes power to withhold anything contained in such packet.

(9) In this section—

“postal packet” has the meaning given by section 125 of the Postal Services Act 2000 (c. 26);

“relevant carrier” means—

(a) the postal operator (as defined in that section of that Act); or

(b) the person other than a person mentioned in paragraph (a) above,

who is to receive or collect the postal packet for the purpose of its being conveyed and delivered; and

“specified person” means a person who—

(a) is detained in a hospital; and

(b) meets such other conditions, or in relation to whom such other conditions are met, as may be specified in regulations.

## **282 Correspondence: supplementary**

(1) If a postal packet or anything contained in it is withheld under subsection (1) or (6) of section 281 of this Act, the managers of the hospital shall record that fact in writing.

(2) If a postal packet or anything contained in it is withheld under—

(a) subsection (1) of section 281 of this Act by virtue of subsection (3) of that section; or

(b) subsection (6) of that section,

the managers of the hospital shall, before the expiry of the period of 7 days beginning with the withholding of the packet or anything contained in it, give notice to the Commission of the matters mentioned in subsection (3) below.

(3) Those matters are—

(a) the name of the specified person;

(b) the nature of the postal packet or contents withheld; and

(c) the reason for withholding the postal packet or contents.

(4) If a postal packet or anything contained in it is withheld under—

(a) subsection (1) of section 281 of this Act by virtue of subsection (3) of that section; or

(b) subsection (6) of that section,

the managers of the hospital shall, before the expiry of the period of 7 days beginning with the withholding of the packet or anything contained in it, give notice to the persons mentioned in subsection (5) below of the fact that the postal packet or anything contained in it has been withheld and the effect of section 283 of this Act.

(5) Those persons are—

(a) the specified person; and

(b) in a case where the packet is withheld as mentioned in paragraph (b) of subsection (4) above, the person by whom the packet was sent (if known).

(6) The functions under section 281 of this Act and this section of the managers of a hospital shall be discharged on their behalf by a person on the staff of the hospital appointed by them for that purpose; and different persons may be so appointed to discharge different functions.

(7) Regulations may—



- (a) make provision with respect to the exercise of the powers conferred by section 281 of this Act;
  - (b) make provision for that section and this section to apply as if references to postal packets included references to written communications by the means specified in the regulations, with such modifications as may be so specified.
- (8) In this section—
- “postal packet” has the same meaning as in section 281 of this Act; and
  - “specified person” has the same meaning as in that section.

### **283      Review of decision to withhold postal packet**

- (1) This section applies where a relevant item is withheld under—
- (a) subsection (1) of section 281 of this Act by virtue of subsection (3) of that section; or
  - (b) subsection (6) of that section.
- (2) On an application—
- (a) in the case where a relevant item is withheld as mentioned in paragraph (a) of subsection (1) above, by the specified person; or
  - (b) in the case where a relevant item is withheld as mentioned in paragraph (b) of that subsection, by—
    - (i) the specified person; or
    - (ii) the person by whom the postal packet was sent,
- the Commission shall review the decision to withhold the relevant item.
- (3) Any application under subsection (2) above shall be made before the expiry of the period of 6 months beginning with the day on which the person making the application receives notice under section 282(4) of this Act.
- (4) On an application under subsection (2) above the Commission may direct that the relevant item should not be withheld; and the managers of the hospital concerned shall comply with any such direction.
- (5) Regulations may make provision with respect to the making of applications under subsection (2) above.
- (6) Regulations under subsection (5) above may in particular make provision as to the production to the Commission of relevant items.
- (7) In this section—
- “postal packet” has the same meaning as in section 281 of this Act;
  - “relevant item” means a postal packet or anything contained in it; and
  - “specified person” has the same meaning as in that section.

### **284      Certain persons detained in hospital: use of telephones**

- (1) Regulations may make provision for or in connection with regulating the use of telephones by such persons detained in hospital as may be specified in the regulations (“specified persons”).
- (2) Provision under subsection (1) above may in particular—
- (a) confer rights on specified persons to use telephones;

- (b) make the entitlement to, or exercise of, any such rights subject to conditions imposed by or under regulations;
  - (c) restrict, or prohibit, the use of telephones by specified persons;
  - (d) authorise the managers of a hospital to intercept, or arrange for the interception of, telephone calls—
    - (i) to specified persons; or
    - (ii) made by specified persons;
  - (e) require the managers of a hospital to make, and maintain, records of such matters as may be specified in the regulations;
  - (f) require the managers of a hospital to inform persons specified in the regulations of matters so specified;
  - (g) confer power on the Commission to give to the managers of a hospital directions as to matters of any description specified in the regulations;
  - (h) require the managers of a hospital to comply with any directions given to them by virtue of paragraph (g) above.
- (3) The conditions mentioned in subsection (2)(b) above include in particular conditions as to payment of call charges for calls made by or on behalf of specified persons.
- (4) Regulations under this section may not authorise the interception of a telephone call made by a specified person to a person mentioned in subsection (6) below unless—
- (a) the person has requested the interception of telephone calls made by the specified person to the person; or
  - (b) the telephone call is or would be unlawful for any reason other than one arising from provision made by virtue of this section.
- (5) Regulations under this section may not authorise the interception of a telephone call made to a specified person by a person mentioned in subsection (6) below unless the telephone call is or would be unlawful for any reason other than one arising from provision made by virtue of this section.
- (6) The persons referred to in subsections (4) and (5) above are—
- (a) any of the persons mentioned in paragraphs (a) to (i), (k) to (n) and (p) of section 281(5) of this Act;
  - (b) the managers of the hospital in which the specified person is detained;
  - (c) a legally qualified person instructed by the specified person to act as the specified person's legal adviser; and
  - (d) such other person as may be specified by the regulations.
- (7) In this section “intercept”, in relation to a telephone call, includes—
- (a) listen to, record or otherwise monitor; and
  - (b) interrupt, cut short, divert or prevent from being connected.
- (8) For the purposes of this section, a telephone call is made when the telephone number of the person being called has been dialled.

## **285      Directions as to implementation of regulations under section 284(1)**

- (1) The Scottish Ministers may give to the managers of a hospital directions as to the implementation by those managers of regulations made under section 284(1) of this Act; and the managers shall comply with any such directions.

- (2) The Scottish Ministers may require the managers of a hospital to provide them with a statement setting out such information as respects the implementation of the regulations by those managers as the Scottish Ministers may specify.

## **286      Safety and security in hospitals**

- (1) Regulations may authorise—
- (a) the search of such persons detained in hospital by virtue of this Act or the 1995 Act as may be specified in the regulations and of anything they have with them in the hospital in which they are detained;
  - (b) the taking, from external parts of the body of those persons and, by means of swabbing, from the mouth of those persons, of samples of body tissue, blood or other body fluid or other material, the taking hypodermically from those persons of samples of blood and the examination of those samples;
  - (c) the placing of restrictions on the kinds of things which those persons may have with them in the hospitals in which they are detained and the removal from them of articles kept in breach of such restrictions;
  - (d) the placing of prohibitions and restrictions on the entry into and the conduct while in those hospitals of persons (“visitors”) visiting those persons or otherwise entering or seeking to enter those hospitals and on the kinds of things which visitors may bring with them into those hospitals;
  - (e) the surveillance, whether directly or otherwise, of those persons and visitors;
  - (f) the search of visitors and of anything they bring with them into those hospitals,
- and make that which is authorised subject to conditions specified in the regulations.
- (2) Regulations may require the managers of each hospital of such class as is or classes as are specified to provide—
- (a) the Scottish Ministers, on their request, with a statement describing how regulations made under subsection (1) above—
    - (i) have been implemented in that hospital during the period the Ministers specify in their request;
    - (ii) are being implemented there at the time of the request;
    - (iii) are proposed by those managers to be implemented there after that time;
  - (b) the Commission with statements of the incidence and circumstances of the implementation there of regulations under subsection (1) above in such ways as are specified.
- (3) Regulations may confer power on the Commission, by direction—
- (a) to prohibit the implementation of regulations under subsection (1) above in relation to a specified patient in a specified way;
  - (b) to require the managers of a hospital in which a specified patient is detained to notify a specified person that such a regulation has been implemented in relation to such a patient in such a way.
- (4) In each of subsections (2) and (3) above, “specified” means specified in the regulations made under that subsection.
- (5) The Scottish Ministers may give to the managers of a hospital directions as to the implementation by those managers of regulations made under subsection (1) above; and the managers shall comply with any such directions.

- (6) Before making regulations under this section the Scottish Ministers shall consult such persons as they consider appropriate.

### *Information*

#### **287 Scottish Ministers' power to require responsible medical officer to provide certain information**

The Scottish Ministers may, for the purposes of the discharge of their functions under—

- (a) Part 10, 11 or 13 of this Act; or
- (b) section 52F, 52L or 52P of the 1995 Act,

in relation to a patient who has a responsible medical officer, require the patient's responsible medical officer to provide them with such information as they may specify.

### *Payments for expenses*

#### **288 Payments to persons in hospital to meet personal expenses**

- (1) Where subsections (2) and (3) below apply in relation to a person, the Scottish Ministers may pay to the person such amounts as they consider appropriate in respect of the person's occasional personal expenses.
- (2) This subsection applies where the person—
  - (a) has a mental disorder;
  - (b) has been admitted to a hospital; and
  - (c) is being given treatment there primarily for mental disorder.
- (3) This subsection applies where it appears to the Scottish Ministers that the person would not otherwise have resources to meet the expenses in question.
- (4) For the purposes of the National Health Service (Scotland) Act 1978 (c. 29), the making of payments under this section to persons for whom services are provided under that Act shall be treated as included among those services.
- (5) In subsection (2) above, "hospital" means—
  - (a) any health service hospital (as defined in section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29)); or
  - (b) any state hospital.

### *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—

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- (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.

### *Informal patients*

## **291 Application to Tribunal in relation to unlawful detention**

- (1) This section applies where, otherwise than by virtue of this Act or the 1995 Act, a person (“the patient”)—
- (a) has been admitted to a hospital; and
  - (b) is being given treatment there primarily for mental disorder.
- (2) A person mentioned in subsection (4) below may apply to the Tribunal for an order requiring the managers of the hospital to cease to detain the patient.
- (3) On an application under subsection (2) above the Tribunal shall—
- (a) if satisfied that the patient is being unlawfully detained in the hospital, make the order mentioned in subsection (2) above; or
  - (b) if not satisfied about the matter mentioned in paragraph (a) above, refuse the application.
- (4) The persons referred to in subsection (2) above are—
- (a) the patient;
  - (b) the patient’s named person;
  - (c) if the patient is a child, any person who has parental responsibilities in relation to the patient;
  - (d) a mental health officer;
  - (e) the Commission;
  - (f) any guardian of the patient;
  - (g) any welfare attorney of the patient; and

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*Status: This is the original version (as it was originally enacted).*

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- (h) any other person having an interest in the welfare of the patient.
- (5) Subsection (2) above is without prejudice to any right that a person has by virtue of any enactment or rule of law.
- (6) In subsection (4)(c) above, “child” and “parental responsibilities” have the same meanings as they have in Part I of the Children (Scotland) Act [1995 \(c. 36\)](#).