
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2008 No.

The Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008 and shall come into force on 3rd November 2008.

(2) In these Regulations—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(1);

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003;

“the appropriate national authority” means the appropriate national authority as mentioned in section 80ZA of the Mental Health Act 1983(2);

“corresponding requirement” means a corresponding requirement as mentioned in section 289(4) of the 2003 Act(3);

“patient’s order” means the relevant requirement to which the patient is subject;

“receiving hospital” means the hospital in Scotland which it is proposed will supervise the patient;

“reception in Scotland” means the arrival of the patient at the place in Scotland at which the patient is to reside and “received” shall be interpreted accordingly;

“relevant local authority” means if the patient was not resident in Scotland before being admitted to hospital the local authority for the area in which the hospital is situated;

“relevant requirement” means a relevant requirement as mentioned in section 289(3) of the 2003 Act;

“responsible clinician” means the responsible clinician within the meaning of section 34(1) of the Mental Health Act 1983(4);

“responsible hospital” means the responsible hospital within the meaning of section 80C(4) of the Mental Health Act 1983(5);

(1) 1995 c. 46.

(2) 1983 c. 20; section 80ZA, inserted by the Mental Health Act 2007 (c. 12) (“the 2007 Act”), section 39(2) and Schedule 5, Part 1, paragraphs 1 and 3.

(3) Subsection (4) of section 289 was inserted by the Adult Support and Protection (Scotland) Act 2007 (asp 10), section 71(1)(e).

(4) The definition of “responsible clinician” was inserted into section 34(1) by the 2007 Act, section 9(10).

(5) Section 80C was inserted by the 2007 Act, section 39(2) and Schedule 5, Part 1, paragraphs 1 and 4.

“warrant for removal” means a warrant issued under regulation 7; and

“working day” means a day which is not—

- (a) Saturday;
- (b) Sunday; or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽⁶⁾.

Application of Regulations

2.—(1) Subject to paragraph (4), Parts II and III of these Regulations apply to persons as provided for in paragraphs (2) and (3).

(2) Part II applies to the removal of a patient subject to a relevant requirement from Scotland to England or Wales.

(3) Part III applies to the reception in Scotland of a person subject to corresponding requirements in England or Wales.

(4) Nothing in these Regulations authorises the removal from Scotland of a patient subject to:

- (a) an interim compulsory treatment order or interim compulsion order;
- (b) sections 113 to 115 or 176 and 177 of the 2003 Act;

or the reception in Scotland of a person subject to measures corresponding or similar to those referred to in this paragraph in England or Wales.

⁽⁶⁾ 1971 c. 80.