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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2008 No.**

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

PART III

RECEPTION OF PERSONS IN SCOTLAND

**Reception in Scotland: consent**

**14.**—(1) This regulation applies where it is proposed that a person (referred to in this Part as a “patient”) who is subject to corresponding requirements in England and Wales and removed from there will be received in Scotland.

(2) No such patient will be received in Scotland without the consent of the managers of the receiving hospital.

(3) The managers of the receiving hospital will consider a request for consent to the reception of such a patient where—

- (a) the request is made in pursuance of provisions having effect in England and Wales; and
- (b) the request contains the information set out in paragraph (4).

(4) The information referred to in paragraph (3) is—

- (a) the name and address of the patient;
- (b) the name and address of the patient’s nearest relative or primary carer, if any;
- (c) the type (or types) of mental disorder that the patient has (by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of the 2003 Act (meaning of “mental disorder”));
- (d) details of the corresponding requirements to which the patient is currently subject;
- (e) the date on which it is proposed that the transfer will take place; and
- (f) the address at which the patient when transferred is to reside in Scotland until such time as the patient is assessed by the responsible medical officer under regulation 25(1).

(5) The managers of the receiving hospital shall as soon as reasonably practicable—

- (a) consider the request; and
- (b) give notice to the appropriate national authority informing them whether they consent to the reception in Scotland of the patient.

**Directions**

**15.** Where the managers of the receiving hospital consent to the reception in Scotland of a patient in accordance with regulation 14, they shall consider whether any directions for the patient’s

conveyance to that patient's destination in Scotland have been given by the appropriate national authority, and may—

- (a) give any directions or further directions as they think fit;
- (b) arrange for the patient's responsible medical officer, appointed by virtue of regulation 18, to give such directions; or
- (c) do both (a) and (b).

#### **Notification to relevant local authority**

**16.**—(1) As soon as reasonably practicable after giving notice in accordance with regulation 14 the managers of the receiving hospital shall give notice to the relevant local authority of the matters mentioned in paragraph (2).

(2) Those matters are—

- (a) the name of the patient;
- (b) the address at which the patient is to reside in Scotland or the patient's contact address in Scotland;
- (c) the measure under the 2003 Act or the 1995 Act to which the patient will be treated as if that patient is subject by virtue of regulation 19; and
- (d) the date on which the patient is expected to be received in Scotland.

#### **Designation of mental health officer responsible for patient's case**

**17.** Section 229 of the 2003 Act shall apply in relation to any patient in respect of whom notice is given under regulation 14 subject to the following modifications—

- (a) in subsection (1)(a) for the words “a relevant event occurs in respect of a patient” substitute “receiving notice in accordance with regulation 14 of the Mental Health (England and Wales Cross border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008”; and
- (b) in subsection (3)(a) for “resides” substitute “is to reside or will have a contact address in Scotland”.

#### **Appointment of responsible medical officer**

**18.** Section 230 of the 2003 Act shall apply in relation to any patient in respect of whom notice is given under regulation 16, subject to the modification that in subsection (4)—

- (a) in the definition of “appropriate act” after (f) insert—
  - “(g) the receiving of notice given in accordance with regulation 14 of the Mental Health (England and Wales Cross Border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008;”;
- (b) in the definition of “relevant managers” at the end insert—
  - “(e) in a case where the appropriate act falls within paragraph (g) of the definition, the managers of the receiving hospital.”.

#### **Reception in Scotland: general**

**19.**—(1) A patient who is subject to a relevant requirement in England and Wales and who is received in Scotland shall be treated once so received as if that patient's treatment had been authorised by virtue of a measure under the 2003 Act or the 1995 Act which most closely corresponds

or is most similar to the measure to which the patient was subject immediately before the transfer took place.

(2) Subject to paragraph (3), the measure to which a patient is treated as having become subject by virtue of paragraph (1) shall have effect including for the purpose of calculation of time limits imposed by the 2003 Act or the 1995 Act, as if that measure had been made or given on the date on which the relevant measure to which the patient was subject, immediately before their transfer from the relevant territory, first had effect.

(3) Paragraph (2) does not apply to time limits which are specifically provided for or otherwise amended by these regulations.

### **Patients subject to compulsory treatment order**

**20.** Where by virtue of regulation 19 a patient is treated as if that patient is subject to a compulsory treatment order, the measures thereby authorised are the measures in section 66(1)(b) to (h) of the 2003 Act which most closely correspond or are most similar to the measures to which the patient was subject immediately before the transfer took place.

### **Patients subject to compulsion order**

**21.** Where by virtue of regulation 19 a patient is treated as if that patient is subject to a compulsion order the measures thereby authorised are the measures in section 57A(8)(b) to (h) and (9) of the 1995 Act<sup>(1)</sup> which most closely correspond or are most similar to the measures to which the patient was subject immediately before the transfer took place.

### **Powers of escorts**

**22.—(1)** Where a patient is being escorted to Scotland by virtue of directions given under regulation 15, from the time when the patient enters Scotland until the patient reaches the patient's destination, the persons escorting the patient (the escorts) will have the powers set out in paragraphs (2) and (3).

(2) Those powers are—

- (a) where the patient is being escorted to the patient's destination in Scotland by escorts authorised in England and Wales under the law of that territory, the same powers in respect of the patient as they had in England and Wales;
- (b) where the patient is being escorted to that patient's destination in Scotland by escorts authorised under or by virtue of the 2003 Act, the same powers to escort the patient as they would have if the patient was subject to the measure under the 2003 Act or the 1995 Act to which they will be treated as if they are subject by virtue of regulation 19;
- (c) without prejudice to sub paragraph (a), where the patient absconds from the custody of escorts mentioned in that subparagraph, to immediately pursue and resume the custody of that person; and
- (d) without prejudice to sub-paragraph (a), to restrain the patient if the patient has absconded or attempted to abscond while being so escorted.

(3) The powers conferred by paragraph (2)(c) and (d) include the power to use reasonable force in their exercise.

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(1) Section 57A was inserted by the 2003 Act, section 133.

### **Absconding**

**23.**—(1) Without prejudice to the powers of an escort under regulation 22, a patient who, while being escorted to their destination in Scotland, absconds within Scotland, will be liable to be taken into custody by a person specified in paragraph (3).

- (2) Where a patient is taken into custody under paragraph (1), the specified person may—
- (a) return the patient to the custody of the escorts from whose charge the patient absconded or, if that is not practicable;
  - (b) take the patient to any place considered appropriate by the patient’s responsible medical officer.
- (3) The persons referred to in paragraph (1) are—
- (a) a mental health officer;
  - (b) a constable;
  - (c) a member of staff of any hospital; and
  - (d) any other person authorised for the purposes by the patient’s responsible medical officer.

### **Mental health officer duties**

**24.**—(1) The mental health officer shall, as soon as practicable after being designated as the mental health officer having responsibility for the patient’s case, in accordance with section 229 of the 2003 Act as applied by regulation 17, comply with the requirements in paragraph (2).

- (2) Those requirements are—
- (a) to take such steps as are reasonably practicable to establish whether the patient has a named person;
  - (b) to notify the patient’s responsible medical officer of the names and address of any named person;
  - (c) to comply with the requirements of section 231 of the 2003 Act subject to the modification that in subsection (1) for the words “where a relevant event occurs in respect of a patient” substitute “where a patient is received in Scotland under the Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008”;
  - (d) to inform the patient of the availability of independent advocacy services under section 259 of the 2003 Act; and
  - (e) to take the appropriate steps to ensure that the patient has the opportunity of making use of those services.

### **Assessment of patients: post transfer**

**25.**—(1) The patient’s responsible medical officer shall within 7 days of the patient’s reception in Scotland carry out an assessment of the patient in accordance with the requirements of paragraph (2).

- (2) Those requirements are—
- (a) to carry out a medical examination of the patient;
  - (b) to consult and have regard to the views of the patient’s mental health officer designated under section 229 of the 2003 Act as applied by virtue of regulation 17; and
  - (c) to consider—
    - (i) whether the conditions in paragraph (4) apply in respect of the patient; and

- (ii) whether it continues to be necessary for the patient to be subject to the measures authorised by the 2003 Act or the 1995 Act to which the patient became treated as the patient was subject by virtue of regulation 19.
- (3) Where a medical examination is carried out under paragraph (2) there must not be a conflict of interest in relation to the medical examination.
- (4) The conditions referred to in paragraph (2)(c)(i) are—
  - (a) where the patient has, by virtue of regulation 19 become treated as if they are subject to a compulsory treatment order—
    - (i) that the patient has a mental disorder;
    - (ii) that medical treatment which would be likely to—
      - (aa) prevent the mental disorder worsening; or
      - (bb) alleviate any of the symptoms, or effects of the disorder,is available for the patient;
    - (iii) that if the patient were not provided with such medical treatment there would be a significant risk—
      - (aa) to the health, safety or welfare of the patient; or
      - (bb) the safety or any other person; and
    - (iv) that because of the mental disorder the patient’s ability to make decisions about the provision of such medical treatment is significantly impaired;
  - (b) where the patient has, by virtue of regulation 19 become treated as if the patient is subject to a compulsion order—
    - (i) that the patient has a mental disorder;
    - (ii) that medical treatment which would be likely to—
      - (aa) prevent the mental disorder worsening ; or
      - (bb) alleviate any of the symptoms, or effects of the disorder,is available for the patient; and
    - (iii) that if the patient were not provided with such medical treatment there would be a significant risk—
      - (aa) to the health, safety and welfare of the patient; or
      - (bb) to the safety of any other person.
- (5) For the purposes of this regulation, the circumstances where there is to be taken to be a conflict of interest are those circumstances specified in the Mental Health (Conflict of Interest) (Scotland) (No. 2) Regulations 2005(2).

**Responsible medical officer’s duty to revoke: compulsory treatment order**

**26.**—(1) This regulation applies in respect of a patient who has become treated as if that patient is subject to a compulsory treatment order by virtue of regulation 19.

(2) If having carried out the assessment required by regulation 25(1) the patient’s responsible medical officer is not satisfied that—

- (a) the conditions mentioned in regulation 25(4)(a) continue to be met in respect of the patient; or

(b) that it continues to be necessary for the patient to be subject to the order, the responsible medical officer shall make a determination revoking the order.

(3) A determination under this regulation will be made as soon as practicable after the duty to make it arises.

#### **Responsible medical officer's duty to revoke: compulsion order**

**27.**—(1) This regulation applies in respect of a patient who has become treated as if that patient is subject to a compulsion order by virtue of regulation 19.

(2) If having carried out the assessment required by regulation 25(1) the patient's responsible medical officer is not satisfied that—

(a) the conditions mentioned in regulation 25(4)(b) continue to be met in respect of the patient; or

(b) that it continues to be necessary for the patient to be subject to the order the responsible medical officer shall make a determination revoking the order.

(3) A determination under this regulation will be made as soon as practicable after the duty to make it arises.

#### **Notification requirements: post assessment**

**28.**—(1) Where a patient is received in Scotland the patient's responsible medical officer shall within the appropriate period, prepare and send to the managers of the receiving hospital a report stating—

(a) whether the relevant conditions apply in respect of the patient;

(b) (by reference to appropriate paragraph (or paragraphs) of the definition of "mental disorder" in section 328(1) of the 2003 Act) the type (or types) of mental disorder that the patient has; and

(c) whether it is necessary for the patient to be subject to the measures authorised by the 2003 Act or the 1995 Act to which the patient became treated as if that patient was subject by virtue of regulation 19.

(2) The managers of the receiving hospital shall within the appropriate period notify the parties listed in paragraph (3) of the following matters, where relevant—

(a) the name and address of the sending hospital;

(b) the name and address of the receiving hospital;

(c) the date on which the transfer took place;

(d) name and other appropriate contact details of the patient's responsible medical officer;

(e) whether, following assessment carried out in accordance with regulation 25(1), the responsible medical officer is satisfied that the relevant conditions apply in respect of the patient;

(f) whether it is necessary for the patient to be subject to the measures authorised by the 2003 Act or the 1995 Act to which the patient became treated as if the patient is subject by virtue of regulation 19;

(g) the date on which the measure to which the patient is treated as being subject by virtue of regulation 19 ceased (whether by revocation or otherwise) or will cease unless otherwise extended; and

(h) the period during which the next mandatory review of the order is to take place.

- (3) The parties referred to in paragraph (2) are the—
- (a) the patient;
  - (b) the patient’s named person;
  - (c) the Commission;
  - (d) the Tribunal;
  - (e) the patient’s mental health officer.
- (4) For the purposes of this regulation—
- (a) the “appropriate period” is as soon as practicable and in any event within 14 days of the date on which the patient was received in Scotland; and
  - (b) “relevant conditions” are the conditions set out in regulation 25(4).

### **Preparation of a care plan**

**29.**—(1) Paragraphs (2) and (3) shall apply in respect of the preparation of care plans for patients received in Scotland.

(2) Where by virtue of regulation 19, the patient has become treated as if that patient is subject to a compulsory treatment order, section 76 of the 2003 Act shall have effect subject to the modification that in subsection (1) for the words “a patient’s responsible medical officer is appointed under section 230 of this Act” substitute “the date on which the patient was assessed in accordance with regulation 25(1) of the Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008 and in any event within 28 days of that date”.

(3) Where by virtue of regulation 19 the patient has become treated as if that patient is subject to a compulsion order section 137 of the 2003 Act shall have effect subject to the following modifications—

- (a) for subsection (1) substitute—

“This section applies where a patient is treated as if that patient is subject to a compulsion order by virtue of regulation 19 of the Mental Health (England and Wales Cross-border transfer: patients subject to requirements or other than detention in hospital) (Scotland) Regulations 2008”; and
- (b) in subsection (2) for the words “a patient’s responsible medical officer is appointed under section 230 of this Act” substitute “the date on which the patient was assessed in accordance with regulation 25(1) of those Regulations and, in any event, within 28 days of that date”.

### **Provision of information to patient**

**30.** Section 260 of the 2003 Act shall have effect with respect to patients received in Scotland subject to the modification that in subsection (3)(a)(ii) for the words “the making of the order” substitute “the reception of the patient in Scotland under the Mental Health (England and Wales Cross border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008”.

### **Provision of assistance to patient with communication difficulties**

**31.** Section 261 of the 2003 Act shall have effect with respect to patients received in Scotland subject to the modification that for paragraph (a) of subsection (3) substitute—

- “(a) any assessment, including medical examination, carried out under regulation 25(1) of the Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008;”.

### **Visits to patients: duty on Commission**

**32.** The Commission shall secure that an authorised person (within the meaning of section 14 of the 2003 Act) visits each patient received in Scotland within 6 months from the date on which the patient is so received.

### **Future treatment of patient**

**33.—(1)** Subject to paragraph (2), and the other specific modifications made by these Regulations, the 2003 Act or, as the case may be, the 1995 Act shall apply to patients received in Scotland as they apply to patients whose treatment commenced in Scotland.

(2) Where the assessment carried out under regulation 25 takes place during the specified period in respect of the sections of the 2003 Act listed in paragraph (3) the review required by those sections need not take place.

(3) The sections referred to in paragraph (2) are—

- (a) section 77(2) first mandatory review);
- (b) section 78(2) (further mandatory review);
- (c) section 139(2) (first review of compulsion order); and
- (d) section 140(2) (further reviews of compulsion order).

(4) In this regulation the “specified period” means the period specified in the sections listed in paragraph (3).