
D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2008 No.

MENTAL HEALTH

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

Made - - - - *2008*

Coming into force - - *3rd November 2008*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 289 and 326 of the Mental Health (Care and Treatment) (Scotland) Act 2003(a) and all other powers enabling them to do so.

In accordance with section 326(4) of that Act a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

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(b);

“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(c);

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

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

(a) 2003 asp 13; section 289 was amended by the Adult Support and Protection (Scotland) Act 2007 (asp 10) (“ASP 2007”), section 71(1); section 326(4)(c) was amended by ASP 2007, section 71(4).

(b) 1995 c.46.

(c) 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.

(d) Subsection (4) of section 289 was inserted by ASP 2007, section 71(1)(e).

“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(a);

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

“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(c).

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.

PART II

REMOVAL OF PATIENTS FROM SCOTLAND

Responsible medical officer’s duties: notification of proposed removal

3. Where—

- (a) a patient has notified their responsible medical officer of the patient’s wish to be removed; or
- (b) in the case where the patient is not capable of giving that notification, the patient’s named person has notified the patient’s responsible medical officer that that person considers that it is in the patient’s best interests to be removed;

(a) The definition of “responsible clinician” was inserted into section 34(1) by the 2007 Act, section 9(10).
(b) Section 80C was inserted by the 2007 Act, section 39(2) and Schedule 5, Part 1, paragraphs 1 and 4.
(c) 1971 c.80.

the responsible medical officer shall as soon as practicable give notice of that fact and any surrounding circumstances of the case to—

- (i) except where the notification referred to in paragraph (b) above has been given by the patient's named person, that person;
- (ii) the Commission;
- (iii) any guardian of the patient;
- (iv) any welfare attorney of the patient;
- (v) the patient's primary carer;
- (vi) the managers of the hospital specified in the patient's order; and
- (vii) the patient's mental health officer.

Mental health officer's duties where notified of proposed removal

4.—(1) The mental health officer shall as soon as practicable after being notified under regulation 3, and in any event within the period of 3 working days beginning with the day after the day on which notice was given, comply with the requirements in paragraph (2).

(2) Those requirements are—

- (a) to interview the patient; and
- (b) to inform the patient's responsible medical officer—
 - (i) of whether the mental health officer agrees or disagrees that the patient be removed;
 - (ii) if the mental health officer disagrees the reason why that is the case; and
 - (iii) of any other matters that the mental health officer considers relevant.

Information and factors to be considered by responsible medical officer in respect of a warrant for removal

5.—(1) The responsible medical officer shall, as soon as practicable after receiving the information required from the mental health officer under regulation 4(2)(b), decide whether to authorise the removal of the patient from Scotland.

(2) When deciding whether to authorise the removal of a patient from Scotland under this regulation, the responsible medical officer shall have regard to the following factors—

- (a) the best interests of the patient;
- (b) that the responsible clinician and responsible hospital in England or Wales are aware of any recorded matters specified in the patient's order;
- (c) the risk to the safety of any person; and
- (d) any views expressed by the mental health officer under regulation 4(2)(b),

and in any event may give authority for removal of the patient only if satisfied that there are in existence in England or Wales 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 the 2003 Act or, as the case may be, the 1995 Act.

Notification of decision

6. The responsible medical officer shall, as soon as practicable after making a decision under regulation 5 on whether or not to authorise removal of a patient from Scotland, give notice of that decision to—

- (a) the patient;
- (b) the patient's named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;

- (e) the Commission;
- (f) the managers of the hospital specified in the patient's order;
- (g) the mental health officer;
- (h) the responsible hospital in England or Wales; and
- (i) if applicable, the responsible clinician in England or Wales.

Warrant for removal

7.—(1) Subject to paragraph (2), where the responsible medical officer decides that a patient be removed from Scotland the responsible medical officer shall issue a warrant for removal which shall authorise that patient's removal from Scotland.

(2) No warrant for removal shall be issued by the responsible medical officer until any consent required in England or Wales has been obtained.

(3) In issuing a warrant for removal the responsible medical officer may give directions for the patient's conveyance to the patient's destination on removal from Scotland.

(4) The warrant for removal shall specify an effective date for the patient's removal and a warrant issued under this regulation will only authorise removal of the patient within the period of 14 days which begins on the day after the effective date.

(5) In issuing the warrant for removal, the responsible medical officer shall immediately send a copy of the warrant to—

- (a) the patient;
- (b) the patient's named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the Commission;
- (f) the managers of the hospital specified in the patient's order;
- (g) the mental health officer;
- (h) the responsible hospital in England or Wales; and
- (i) if applicable, the responsible clinician in England or Wales.

(6) In this regulation "effective date " is the date specified by the responsible medical officer in the warrant as the date on or after which the removal is authorised to take place and shall be not sooner than 3 working days beginning with the day after the date on which the warrant is signed by the responsible medical officer.

Appeal to Tribunal

8.—(1) Where notice is given under regulation 6 that a patient is not to be removed from Scotland, the patient or the patient's named person, may, during the period of 14 days beginning with the day on which notice is received, appeal to the Tribunal against the decision of the responsible medical officer not to authorise the proposed removal.

(2) In considering any appeal under paragraph (1) the Tribunal must have regard to the factors mentioned in regulation 5(2) and, in particular, before making any direction under paragraph (3)(b), must be satisfied that there are in existence in England or Wales 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 the 2003 Act or, as the case may be, the 1995 Act.

(3) On an appeal under paragraph (1) the Tribunal may:

- (a) make no direction to the responsible medical officer under this regulation; or
- (b) direct the responsible medical officer to issue a warrant for removal which shall authorise that patient's removal from Scotland, and that as soon as practicable after the

direction is made, but subject always to any consent required under regulation 7(2) being obtained.

(4) The responsible medical officer shall, if so directed by the Tribunal under paragraph (3)(b), issue a warrant for removal, in accordance with regulation 7, which shall authorise that patient's removal from Scotland, and that as soon as practicable after the direction is made.

Appeal from Tribunal

9.—(1) Subject to the modifications in paragraphs (2) and (3), sections 320 and 321 of the 2003 Act apply to decisions of the Tribunal to make or refuse to make an order under regulation 8(2).

(2) In section 320(5) omit paragraphs (c) and (d).

(3) In section 321(2) after the words “this Act”, add “as modified by the Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008(a)”.

Notification requirements: post removal

10. Where the patient is removed from Scotland under this Part of these Regulations the managers of the hospital specified in the patient's order shall before the expiry of the period of 7 days beginning with the date of removal give notice to the patient's mental health officer and the Commission of—

- (a) the date of removal; and
- (b) the address of the place where the patient after removal is to reside.

Escorts from other territories: powers

11.—(1) This regulation applies to persons from England and Wales, who are—

- (a) authorised to escort patients in England and Wales; and
- (b) authorised to escort the patient from Scotland by virtue of directions given in accordance with regulation 7(3).

(2) Persons referred to in paragraph (1) will have the same power in respect of the patient they are escorting, while in Scotland, as persons otherwise authorised to escort patients under or by virtue of the 2003 Act.

Absconding

12.—(1) Paragraph (4) applies if—

- (a) a warrant for removal of the patient has been issued under regulation 7; and
- (b) the patient falls within paragraph (2) or (3).

(2) A patient falls within this paragraph if while being conveyed to or travelling to the country or territory to which the patient is being removed, the patient absconds.

(3) A patient falls within this paragraph if the patient—

- (a) is being conveyed to, or is travelling in, England and Wales but has not yet reached their destination;
- (b) absconds before the measures to which the patient is subject in Scotland ceases to have effect by virtue of regulation 13; and
- (c) returns to Scotland.

(4) Sections 301 and 303 and regulations under section 310 of the 2003 Act will apply to the patient subject to the modifications in paragraph (5).

(a) S.S.I. 2008/

- (5) In section 301–
- (a) in subsection 1(a)(ii) omit the word “or”;
 - (b) in subsection (1)(b) after the word “absconds” insert–
“; or
 - (c) while being removed from Scotland by virtue of regulations made under section 289 of this Act, absconds.”.

Cessation of requirements

13. Where a patient who is subject to a relevant requirement by virtue of the 2003 Act or the 1995 Act is removed from Scotland in pursuance of arrangements under this Part of these Regulations the requirement to which the patient is subject shall cease to have effect when the patient becomes subject to a corresponding requirement in England or Wales.

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;”;and
- (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^(a) 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 sub-paragraph, 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.

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.

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

- (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(a).

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.

(a) S.S.I. 2005/380.

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 other than detention) (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).

PART IV

AMENDMENT OF OTHER LEGISLATION

34. The Mental Health (Absconding by mentally disordered offenders) (Scotland) Regulations 2005^(a) are amended as follows:

In regulation 2(2)(m) for “under section 290” substitute “under section 289 or 290”.

St Andrew’s House,
Edinburgh

2008

Authorised to sign by the Scottish Ministers

^(a) S.S.I. 2005/463.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 289 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) provides for the transfer of patients subject to a requirement other than detention to a place outwith Scotland and for patients subject to corresponding requirements in England, Wales, Northern Ireland, the Isle of Man or the Channel Islands to be received in Scotland. These Regulations make provision in relation to the transfer of patients to England and Wales and the reception in Scotland of patients from England and Wales. Part I of these Regulations make general provision; Part II (regulations 3 to 13) makes provision for the removal of patients from Scotland; Part III (regulations 14 to 33) makes provision for the reception of persons in Scotland; whilst Part IV (regulation 34) amends other legislation consequential on these Regulations.

Regulation 2 provides that Part II applies to the removal of patients subject to a “relevant requirement” within the meaning of section 289(3) of the 2003 Act. Part III applies to the reception in Scotland of patients subject to corresponding requirements within the meaning of section 289(4) of the 2003 Act. The Regulations do not apply to patients subject to interim orders or the patients who are in breach of a compulsory treatment or compulsion order.

Regulation 3 provides that where a patient’s responsible medical officer receives notice from the patient or the patient’s named person proposing removal of the patient from Scotland, the responsible medical officer must give notice of that fact and any surrounding circumstances of the case to the parties listed in that regulation.

Regulation 4 requires the mental health officer to interview the patient and inform the responsible medical officer of whether the mental health officer agrees or disagrees that the patient should be removed.

Regulation 5 lists the factors which the responsible medical officer shall consider in deciding whether to issue a warrant for removal.

Regulation 6 provides for notification of the decision (whether in favour of or against the proposed removal) to be given to the parties listed.

Regulation 7 provides for the issue of a warrant for removal and the giving of any necessary directions in relation to the patient’s removal, where the registered medical officer has decided that the patient be removed.

Regulation 8 provides a right of appeal to the patient and the patient’s named person to the Tribunal against any decision of the responsible medical officer not to authorise the patient’s transfer to England or Wales, and regulation 9 provides for a further appeal from a decision of the Tribunal to be made to the sheriff principal and the Court of Session.

Regulation 10 provides for notice to be given of the removal to the mental health officer and the Mental Welfare Commission within 7 days of the removal.

Regulation 11 provides powers for escorts from other territories or countries while escorting patients in Scotland.

Regulation 12 provides for a patient who absconds while being removed to be taken into custody.

Regulation 13 provides that when a patient removed from Scotland becomes subject to requirements in England or Wales, the requirements to which they were subject in Scotland will no longer have effect.

Regulation 14 makes provision for the consent of the managers of the receiving hospital to the reception of a patient in Scotland where the request is made in respect of a patient subject to corresponding requirements in England and Wales.

Regulation 15 provides for directions to be given by the managers of the receiving hospital as to the arrangements for transfer where the person or authority sending the patient have not made arrangements or where additional directions are required.

Regulation 16 provides for the relevant local authority to be notified to allow a mental health officer to be designated under regulation 17.

Regulation 17 provides for the designation of a mental health officer responsible for the patient's case.

Regulation 18 provides for the appointment of a responsible medical officer.

Regulation 19 provides for a patient received in Scotland to be treated as if that patient were subject to an order or direction made under the 2003 Act or the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") which most closely corresponds to the measure to which the patient was subject immediately before transfer.

Regulations 20 and 21 provide that the measures authorised to apply where a patient is subject to a compulsory treatment order or compulsion order are those authorised under section 66(1)(b) to (h) of the 2003 Act or section 57A((8)(b) to (h) and (9) of the 1995 Act respectively which most closely correspond to the measures to which the patient was subject immediately before the transfer.

Regulation 22 provides for escorts in Scotland taking the patient to his or her destination in Scotland.

Regulation 23 provides in addition for the taking into custody of a patient who absconds by a person specified and for the patient then to be returned to the escorts or taken to another suitable destination.

Regulation 24 makes provision for the duties which apply to a mental health officer.

Regulation 25 makes provision for an assessment to be carried out on any patient received in Scotland by the responsible medical officer within 7 days of the patient's arrival which includes a medical examination and consideration of the appropriateness of the measures under the 2003 Act or the 1995 Act to which the patient has become treated as if subject.

Regulations 26 and 27 provide that where a responsible medical officer has assessed a patient who is treated as being subject to a compulsory treatment order or a compulsion order and is not satisfied that the patient meets the appropriate criteria, the responsible medical officer shall revoke the order.

Regulation 28 provides for the responsible medical officer to report to the managers of the receiving hospital on the patient's mental disorder and whether it is necessary for measures under the 2003 Act or the 1995 Act to continue to be applied. The managers of the receiving hospital shall then notify the parties listed in that regulation of the matters specified.

Regulation 29 provides for the application of the relevant sections of the 2003 Act on the preparation of care plans to apply to patients received in Scotland.

Regulation 30 applies section 260 of the 2003 Act to such patients to provide for information to be provided to those patients.

Regulation 31 provides for assistance to patients with communication difficulties.

Regulation 32 provides for patients to be visited by the Commission within six months of their transfer.

Regulation 33 makes provision for the 2003 Act and the 1995 Act to apply to patients received in Scotland subject to the modifications made in this instrument.

Regulation 34 amends the Mental Health (Absconding by mentally disordered offenders) (Scotland) Regulations 2005 to expand the circumstances in which a patient is liable to be taken into custody to include when a patient absconds while being removed from Scotland by virtue of regulations made under section 289 of the 2003 Act.

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on costs to business.

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