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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 452**

**The Mental Health (Care and Treatment) (Scotland) Act  
2003 (Transitional and Savings Provisions) Order 2005**

**PART 7**

**TRANSFER DIRECTIONS**

**Transfer directions**

**29.**—(1) A transfer direction patient shall be treated as if that patient was subject to a transfer for treatment direction made under section 136 of the 2003 Act on the day the transfer direction was made and as if liable to be detained by virtue of the 2003 Act.

(2) The transfer for treatment direction is deemed to specify the hospital specified in the transfer direction.

(3) Notwithstanding section 213(6) of the 2005 Act, the relevant day in respect of a transfer direction patient is the day which falls 2 years after the day when the transfer direction under the 1984 Act was made or the anniversary of that day, whichever falls in the period of 12 months prior to 5th October 2005.

(4) Where a transfer direction patient has made an appeal under section 30, 63 or 71(5) of the 1984 Act that patient shall be treated—

- (a) where the appeal was made in any period of 12 months beginning with the date of the transfer direction under which that patient was detained, as if an application had been made to the Tribunal under section 214 of the 2003 Act in the period mentioned in section 214(6)(a); or
- (b) where the appeal was made in any subsequent period of 12 months, as if an application had been made to the Tribunal under section 214 of the 2003 Act in the period mentioned in section 214(6)(b).

(5) The effect of section 70(2) of the 1984 Act as applied by section 71(3) of that Act shall continue in respect of any transfer direction patient until that patient has been conveyed to hospital or the direction has expired.

**Leave of absence**

**30.**—(1) Notwithstanding section 224(4) of the 2003 Act, where for the period immediately before 5th October 2005 a transfer direction patient has been granted leave of absence under section 27 of the 1984 Act, whether as applied by Part 2 of schedule 2 of that Act or not, that patient shall be treated as if a certificate had been granted under section 224(2) of the 2003 Act for the period of absence or the specified occasions for which the leave of absence was granted under section 27 except that the total period of absence shall be no more than 12 months from the first day of absence or 9 months from 5th October 2005, whichever expires earlier.

(2) Any direction made or condition imposed under section 27(3) of the 1984 Act whether as applied by Part 2 of schedule 2 of that Act or not, shall be deemed to be a condition included in a certificate granted under section 224(2) of the 2003 Act.

(3) Where by 5th October 2005 the Commission has not been notified of a grant of leave of absence or an extension of leave of absence under section 27(4) of the 1984 Act, the responsible medical officer shall, before the expiry of the period of 14 days beginning with the day of the granting of leave or extension, give notice of it to the Commission.

### **Transfer provisions**

**31.**—(1) Where a transfer direction patient has been transferred in accordance with the provisions of section 29 of the 1984 Act whether as applied by schedule 2 of that Act or not, and no intimation of the transfer has yet been made in accordance with section 29(2) of the 1984 Act at 5th October 2005, such intimation shall be made within 7 days of the transfer.

(2) Where a transfer direction patient is transferred to a state hospital on or after 8th September 2005 and no appeal is lodged under section 29(4) of the 1984 Act by 5th October 2005, the patient shall be treated as if section 220 of the 2003 Act applied to that patient.

(3) Where a transfer direction patient is transferred to a state hospital on or after 8th September 2005 and an appeal is lodged under section 29(4) of the 1984 Act but not determined by 5th October 2005, section 29(4) shall continue to have effect in respect of that appeal.

### **Absconding**

**32.** Where immediately before 5th October 2005 a transfer direction patient is a patient such as is referred to in section 28(1)(a), (b) or (c) of the 1984 Act—

- (a) that patient shall be treated as liable to be taken into custody, under regulations made under section 310 of the 2003 Act and dealt with in accordance with those regulations; and
- (b) the period of the patient's absence shall be calculated from and including the first day of the patient's absence notwithstanding the date when the patient became subject to the 2003 Act.