
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 467

**The Mental Health (Cross border transfer:
patients subject to detention requirement or
otherwise in hospital) (Scotland) Regulations 2005**

PART III

RECEPTION OF PERSONS IN SCOTLAND

Reception in Scotland: consent

24.—(1) This regulation applies where it is proposed that a person (referred to in this Part as a “patient”) who is subject to relevant measures in a relevant territory will be received in Scotland.

(2) No such patient will be received in Scotland without the consent of the Scottish Ministers.

(3) The Scottish Ministers 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 a relevant country or territory; 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 relevant measures to which the patient is currently subject;

(e) the name and address of the hospital in the relevant territory in which the patient is presently detained or liable to be detained;

(f) the name and address of the hospital in Scotland in which it is proposed the patient will be detained or liable to be detained;

(g) where the patient when transferred will fall within regulation 30(3), the address of the place where the patient is to reside in Scotland;

(h) the date on which it is proposed that the transfer will take place;

(i) confirmation that arrangements have been made for admitting the patient to the receiving hospital; and

(j) the name and other appropriate contact details of the approved medical practitioner who it is anticipated will become the patient’s responsible medical officer.

(5) The Scottish Ministers shall, as soon as practicable—

(a) consider the request; and

- (b) give notice to the managers of both the sending hospital and the receiving hospital informing them whether the Scottish Ministers consent to the reception in Scotland of the patient.

Directions

25. Where the Scottish Ministers consent to the reception in Scotland of a patient in accordance with regulation 24, they shall consider whether any directions for the patient's conveyance to their destination in Scotland have been given by the person or authority exercising corresponding functions in a relevant territory, 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 29 or the managers of the receiving hospital to give such directions; or
- (c) do both (a) and (b).

Application of regulations 27 to 29

26. Regulations 27 to 29 apply if the managers of the receiving hospital—

- (a) are given notice in accordance with regulation 24(5) that the Scottish Ministers consent to the reception in Scotland of the patient; and
- (b) receive notice from the managers of the sending hospital that the transfer is to proceed and the patient received in Scotland.

Notification to relevant local authority

27.—(1) As soon as reasonably practicable after receiving notice given in accordance with regulation 26(b) 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 name and address of the receiving hospital;
- (c) the measure under the 2003 Act or the 1995 Act to which the patient will be treated as if they are subject by virtue of regulation 30(1); 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

28. Section 229 of the 2003 Act shall apply in relation to any patient in respect of whom notice is given under regulation 27 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 27 of the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005”; and
- (b) in subsection (3)(a) for “resides” substitute “is to reside”.

Appointment of responsible medical officer

29. Section 230 of the 2003 Act shall apply in relation to any patient in respect of whom notice is given under regulation 26(b), subject to the modification that, in subsection (4)—

- (a) in the definition of “appropriate act” at the end insert–
 - “(g) the receiving of notice given in accordance with regulation 26(b) of the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005.”;
- (b) in the definition of “relevant managers” at the end insert–
 - “(e) in a case where the appropriate act falls within paragraph (g) of that definition, the managers of the receiving hospital.”.

Reception in Scotland: general

30.—(1) A patient, who is subject to relevant measures in a relevant territory and, who is received in Scotland, shall be treated once so received—

- (a) as if their detention in hospital had been authorised by virtue of a measure under the 2003 Act⁽¹⁾ or the 1995 Act⁽²⁾ which most closely corresponds or is most similar to the measure to which the patient was subject immediately before the transfer took place; and
- (b) where the patient was subject to a measure under any enactment in force in that territory restricting their discharge immediately before the transfer took place, as if the patient was subject to the measure under the 2003 Act or the 1995 Act which most closely corresponds to the measure under the enactment restricting their discharge to which the patient was subject.

(2) Without prejudice to paragraph (1), where the relevant authority transfers responsibility for a patient who falls within paragraph (3) to the Scottish Ministers the patient shall be treated—

- (a) as if the patient was subject to a restriction order; and
- (b) as if on the date of the transfer the patient had been conditionally discharged under section 193(7) of the 2003 Act and not recalled under section 202 of that Act.

(3) A patient falls within this paragraph if, immediately before their transfer from the relevant territory, the patient—

- (a) was subject to measure in a relevant territory corresponding or similar to a restriction order; and
- (b) had been conditionally discharged under the most closely corresponding enactment in force in the relevant territory.

(4) Where a patient to whom paragraph (1) applies was, immediately before their transfer from the relevant territory, liable to be detained by virtue of a measure corresponding or similar to a transfer for treatment direction or a hospital direction made while serving, or in connection with, a sentence of imprisonment imposed by a court in the relevant territory the patient shall be treated as if the sentence had been imposed by a court in Scotland.

(5) Subject to paragraph (6), the measure to which a patient becomes treated as if they are 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.

(6) Paragraph (5) does not apply to time limits which are specifically provided for or otherwise amended by these regulations.

(1) 2003 asp 13.
(2) 1995 c. 46.

(7) In this section “the relevant authority” means the person or authority exercising corresponding functions in the relevant territory to those exercised by the Scottish Ministers under section 202 of the 2003 Act.

Powers of escorts

31.—(1) Where a patient is being escorted to Scotland, by virtue of directions given by regulation 25, from the time when the patient enters Scotland until the patient reaches their 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 their destination in Scotland by escorts authorised in the relevant territory under the law of that territory, the same powers in respect of the patient as they had in the relevant territory;
- (b) where the patient is being escorted to their 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 30;
- (c) without prejudice to subparagraph (a) where the patient absconds from the custody of escorts mentioned in that subparagraph, to immediately pursue and resume the custody of the person; and
- (d) without prejudice to subparagraph (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

32.—(1) Without prejudice to the powers of an escort under regulation 31, 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 in to 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 the receiving hospital or any other 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.

Patients subject to compulsory treatment order

33. Where by virtue of regulation 30 a patient is treated as if they are subject to a compulsory treatment order or an interim compulsory treatment order the measures thereby authorised are—

- (a) the detention of the patient in the receiving hospital; and
- (b) the giving to the patient in accordance with Part 16 of the 2003 Act of medical treatment.

Persons subject to compulsion order

34. Where by virtue of regulation 30 a patient is treated as if they are subject to a compulsion order the measures thereby authorised are—

- (a) the detention of the patient in the receiving hospital; and
- (b) the giving to the patient in accordance with Part 16 of the 2003 Act of medical treatment.

Mental health officer's duties

35.—(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 28, 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 name 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 "patient is received in Scotland under the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005;
 - (d) to inform the patient of the availability of independent advocacy services under section 259 of the 2003 Act; and
 - (e) to take appropriate steps to ensure that the patient has the opportunity of making use of those services.

Assessment of patient: post transfer

36.—(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; or
 - (b) to make arrangements for an approved medical practitioner to carry out such an examination;
 - (c) to consult and have regard to the views of the patient's mental health officer designated under regulation 28; and
 - (d) to consider—
 - (i) whether the conditions in paragraph (4) apply in respect of the patient; and
 - (ii) whether, subject to paragraph (5), 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 if they were subject by virtue of regulation 30.
- (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)(d)(i) are—
 - (a) where the patient has, by virtue of regulation 30 become treated as if they are subject to one of the orders or directions listed in paragraph (6)—

- (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 or welfare of the patient; or
 - (bb) to the safety of any other person;
- (b) where the patient has, by virtue of regulation 30 become treated as if they are subject to an emergency detention certificate or to a short term detention certificate, the conditions are–
 - (i) that the patient has a mental disorder;
 - (ii) that because of the mental disorder, the patient’s ability to make decisions about the provision of medical treatment is significantly impaired; and
 - (iii) that if the patient were not detained in hospital there would be a significant risk–
 - (aa) to the health, safety or welfare of the patient; or
 - (bb) to the safety of any other person;
- (c) where the patient has, by virtue of regulation 30 become treated as if they are subject to an interim compulsory treatment order or a compulsory treatment order the conditions are–
 - (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) to the safety of 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.
- (5) Where the patient has by virtue of regulation 30 become treated as if they are subject to–
 - (a) a compulsion order and restriction order;
 - (b) a hospital direction;
 - (c) a transfer for treatment direction,

in addition to matters specified in paragraph (2)(d)(ii) the responsible medical officer shall also consider whether, as a result of the patient’s mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment.

- (6) The orders and directions referred to in paragraph (4)(a) are–
 - (a) a compulsion order;
 - (b) a compulsion order and a restriction order;
 - (c) a hospital direction; and

(d) a transfer for treatment direction.

(7) 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(3).

Responsible medical officer’s duty to revoke: emergency detention certificate and short term detention certificate

37.—(1) This regulation applies in respect of a patient who has become treated as if they are subject to an emergency detention certificate or a short-term detention certificate by virtue of regulation 30.

(2) If having carried out the assessment required by regulation 36(1) the patient’s responsible medical officer is not satisfied that—

- (a) the conditions mentioned in regulation 36(4)(b) continue to be met in respect of the patient; or
- (b) that it continues to be necessary for the detention in hospital of the patient to be authorised by the certificate,

the responsible medical officer shall revoke the certificate.

Responsible medical officer’s duty to revoke: interim compulsory treatment order, compulsory treatment order and compulsion order

38.—(1) This regulation applies in respect of a patient who has become treated as if they are subject to an interim compulsory treatment order, a compulsory treatment order or a compulsion order by virtue of regulation 30.

(2) If having carried out the assessment required by regulation 36(1) the patient’s responsible medical officer is not satisfied that—

- (a) the conditions mentioned in regulation 36(4)(c) 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 report and recommendation following assessment: compulsion order and restriction order

39.—(1) Subject to the modifications in paragraph (2), section 183 of the 2003 Act shall have effect in respect of a patient who has become treated as if they are subject to a compulsion order and a restriction order by virtue of regulation 30.

(2) The modifications referred to are—

- (a) in subsection (1), after “Act” insert “or an assessment under regulation 36(1) of the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005”;
- (b) in subsection (2), after “review” insert “or assessment”;
- (c) in subsections (3)(a), (6)(a)(i) and (7)(a)(i), after “Act” insert or “regulation 36(4)(a) of those Regulations”; and

- (d) in subsection (5)(b)(ii) after “Act” insert “paragraph (4)(a)(ii) and (iii) of regulation 36 of those Regulations”.

Responsible medical officer’s report and recommendation following assessment: hospital direction and transfer for treatment direction

40.—(1) Subject to the modifications in paragraph (2), section 207 of the 2003 Act shall have effect in respect of a patient who has become treated as if they are subject to a compulsion order and a restriction order by virtue of regulation 30.

(2) The modifications referred to are—

- (a) in subsection (1), after “Act” insert “ or an assessment under regulation 36(1) of the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005”;
- (b) in subsection (2), after “review” insert “or assessment”;
- (c) in subsection (3)(a), after “Act” insert or “regulation 36(4)(a) of those Regulations”;
- (d) in subsection (4)—
- (i) after “by” insert—
- “_”;
- (a)
- (ii) after “Act” insert—
- “; or
- (b) the mental health officer consulted under regulation 36(2) of those regulations,”;
- (e) in subsection (5) for “persons consulted under section 206(3)(c)” substitute “the person referred to in subsection (4)(a) and (b)”;
- (f) in subsection (5)(b)(ii) after “Act” insert “or paragraph (4)(a)(ii) and (iii) of regulation 36 of those Regulations”.

Notification requirements: post assessment

41.—(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 they were subject by virtue of regulation 30.

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

- (e) whether following assessment carried out in accordance with regulation 36(2), 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 they were subject by virtue of regulation 30;
 - (g) the date on which authorisation of detention of the patient under the 2003 Act or, as the case may be, the 1995 Act ceased (whether by revocation or otherwise) or, will cease unless otherwise extended; and
 - (h) where the patient is subject to a compulsory treatment order or, as the case may be, a compulsion order the period during which the next mandatory review of the order is to take place.
- (3) The parties referred to in paragraph (2) are—
- (a) the patient;
 - (b) the patient’s named person;
 - (c) the Commission;
 - (d) where the patient became treated as if they were subject to a compulsory treatment order or, as the case may be, a compulsion order, the Tribunal;
 - (e) where the patient became treated as if they were subject to an order or direction listed in paragraph (4), the Scottish Ministers; and
 - (f) the mental health officer designated under regulation 28.
- (4) The orders and directions mentioned in paragraph (3)(e) are—
- (a) a compulsion order and a restriction order;
 - (b) a hospital direction; or
 - (c) a transfer for treatment direction.
- (5) 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 36(4).

Preparation of a care plan

42.—(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 30, the patient has become treated as if they are subject to a compulsory treatment order, section 76 of the 2003 Act⁽⁴⁾ 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 36 of the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005, and, in any event, within 28 days of that date”.

(3) Where, by virtue of regulation 30, the patient has become treated as if they are subject to a compulsion order section 137 of the 2003 Act shall have effect subject to the following modifications.

(4) 2003 asp 13.

(a) for subsection (1) substitute–

“This section applies where a patient is treated as if they are subject to a compulsion order by virtue of regulation 30 of the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005.”; 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 36 of those Regulations and, in any event, within 28 days of that date”.

Provision of information to patient

43. 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)(i) for the words–

“the beginning of such detention” substitute “the patient is received in Scotland under the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005”.

Provision of assistance to patient with communication difficulties

44. Section 261 of the 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 36 of the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005.”.

Visits to patients: duty on Commission

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

Future treatment of patient

46.—(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 36 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 reviews);
- (c) section 139(2) (first review of compulsion order);
- (d) section 140(2) (further reviews of compulsion order);
- (e) section 182(2) (review of compulsion order and a restriction order); and
- (f) section 206(2) (review of hospital direction and transfer for treatment direction).

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

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*
