



# Mental Health (Scotland) Act 1984

## 1984 CHAPTER 36

### PART VII

#### REMOVAL AND RETURN OF PATIENTS WITHIN UNITED KINGDOM ETC.

##### *Removal to and from England and Wales*

#### **77 Removal of patients to England and Wales.**

- (1) If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained or subject to guardianship under this Act, that it is in the interests of the patient to remove him to England and Wales, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, the Secretary of State may authorise his removal to England and Wales and may give any necessary directions for his conveyance to his destination.
- (2) Where a patient who is liable to be detained under this Act by virtue of an application, order or direction under any enactment in force in Scotland is removed under this section and admitted to a hospital in England and Wales, he shall be treated as if on the date of his admission he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the corresponding enactment in force in England and Wales, and, where he is subject to an order or direction under any enactment in this Act restricting his discharge, as if he were subject to an order or direction under the corresponding enactment in force in England and Wales.
- (3) Where a patient who is subject to guardianship under this Act by virtue of an application or order under any enactment in force in Scotland is removed under this section and received into guardianship in England and Wales, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application or order under the corresponding enactment in force in England and Wales and as if the application had been accepted or, as the case may be, the order had been made on that date.
- (4) Where a patient removed under this section was immediately before his removal liable to be detained under this Act by virtue of a transfer direction given while he was

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serving a sentence of imprisonment (within the meaning of section 71(7) of this Act) imposed by a court in Scotland, he shall be treated as if the sentence had been imposed by a court in England and Wales.

- (5) Where a person so removed as aforesaid was immediately before his removal subject to a restriction order or a restriction direction, being an order or direction of limited duration, the restriction order or restriction direction to which he is subject by virtue of subsection (2) of this section shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed.

[<sup>F1</sup>(5A) Where a patient removed under this section was immediately before his removal liable to be detained under this Act by virtue of a hospital direction made by a court in Scotland, he shall be treated as if any sentence of imprisonment passed at the time at which the hospital direction was made had been imposed by a court in England and Wales.]

- (6) In this section references to a hospital in England and Wales shall be construed as references to a hospital within the meaning of Part II of the <sup>M1</sup>Mental Health Act 1983.

#### Textual Amendments

**F1** S. 77(5A) inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1, para. 9(8)** (with s. 33(6)); S.I. 1997/2323, art. 4, **Sch. 2**

#### Marginal Citations

**M1** 1983 c. 20.

### [<sup>F2</sup>77A **Transfer of responsibility for patients to England and Wales.**

- (1) If it appears to the Secretary of State, in the case of a patient who—
- (a) is subject to a restriction order under section 59 of the <sup>M2</sup>Criminal Procedure (Scotland) Act 1995; and
  - (b) has been conditionally discharged under section 64 or 68 of this Act,
- that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the Minister exercising corresponding functions in England and Wales, transfer responsibility for the patient to that Minister.
- (2) Where responsibility for such a patient is transferred under this section, the patient shall be treated—
- (a) as if on the date of the transfer he had been conditionally discharged under the corresponding enactment in force in England and Wales; and
  - (b) as if he were subject to a restriction order under the corresponding enactment in force in England and Wales.]

#### Textual Amendments

**F2** S. 77A inserted (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3 Pt. II para. 6** (with s. 57(8)); S.I. 1997/2200, art. 2

#### Marginal Citations

**M2** 1995 c.46.

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## **78 Position of nearest relative on removal to England and Wales.**

- (1) Where a patient is removed from Scotland to England and Wales in pursuance of arrangements under this Part of this Act, and at the time of his removal there is in force an order under Part V of this Act directing that the functions of his nearest relative under this Act shall be exercisable by a person other than the nearest relative within the meaning of the said Part V, the order, so far as it so directs, shall, on the patient's admission to a hospital or reception into guardianship in England and Wales, have effect as if it were an order made by a county court under Part II of the Mental Health Act 1983, and accordingly may be discharged or varied by the county court under that Act and not by the sheriff under this Act.
- (2) Where a patient is removed as aforesaid and the person who, apart from any such order, is treated by virtue of any of the provisions of section 53 to 57 of this Act as the nearest relative within the meaning of Part V of this Act would not be treated by virtue of section 26 of the said Act of 1983 as the nearest relative within the meaning of Part II of that Act, that person shall, after the admission of the patient to a hospital or his reception into guardianship in England and Wales, be treated as the nearest relative within the meaning of Part II of the said Act of 1983, subject, however, to any order made or treated by the foregoing subsection as made, by the county court under section 29 of that Act and without prejudice to the operation of the other provisions of Part II of that Act with respect to the nearest relative of a patient.
- (3) An order of the sheriff under section 56 of this Act may be proved by a certificate under the hand of the sheriff clerk.

## **79 Position of nearest relative on removal to Scotland.**

- (1) Where a patient is removed from England and Wales to Scotland in pursuance of arrangements under the Mental Health Act 1983, and at the time of his removal there is in force an order under Part II of that Act directing that the functions of his nearest relative under that Act shall be exercisable by a person other than the nearest relative within the meaning of that Part of that Act, the order, so far as it so directs, shall, on his admission to a hospital or reception into guardianship in Scotland, have effect as if it were an order made by a sheriff under Part V of this Act, and accordingly may be discharged or varied by the sheriff under this Act and not by the county court under that Act.
- (2) Where a patient is removed as aforesaid and the person who, apart from any such order, is treated by virtue of sections 26 to 28 of the said Act of 1983 as the nearest relative within the meaning of Part II of that Act would not be treated by virtue of section 53 of this Act as the nearest relative within the meaning of Part V of this Act, that person shall, after the admission of the patient to a hospital or his reception into guardianship in Scotland, be treated as the nearest relative within the meaning of Part V of this Act, subject, however, to any order made, or treated by the foregoing subsection as made, by the sheriff under section 56 of this Act and without prejudice to the operation of the other provisions of Part V of this Act with respect to the nearest relative of a patient.
- (3) An entry made in a book or other document required to be kept for the purposes of section 12 of the <sup>M3</sup>County Courts Act 1984 (which relates to the keeping of records of proceedings of county courts) and relating to an order of a county court under section 29 or section 52 or 53 of the <sup>M4</sup>Mental Health Act 1959 or section 30 of the <sup>M5</sup>Mental Health Act 1983, or a copy of such an entry purporting to be signed and

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certified as a true copy by the registrar of the county court, shall, in Scotland, be evidence of the like matters and to the like extent as in England and Wales.

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**Marginal Citations**

**M3** 1984 c. 28.

**M4** 1959 c. 72.

**M5** 1983 c. 20.

**Status:**

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