
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

MENTAL HEALTH

**The Mental Health (Cross-border transfer: patients subject to
detention requirement or otherwise in hospital) (Scotland)
Amendment Regulations 2017**

Made - - - -

Coming into force - -

30th June 2017

CONTENTS

PART 1

Introductory

1. Citation
2. Commencement
3. Meaning of “principal Regulations”
4. Saving provision in relation to removal of patients from Scotland
5. Saving provision in relation to reception of patients in Scotland

PART 2

Amendments to the principal Regulations

CHAPTER 1

Amendment to Part 1 (General)

6. Amendment of regulation 1

CHAPTER 2

Amendments to Part 2 (Removal of patients from Scotland)

7. Amendment of regulation 5
8. Amendment of regulation 7
9. New regulation 7A
10. Amendment of regulation 8
11. Amendment of regulation 9
12. Amendment of regulation 10
13. New regulations 10A to 10E
14. Revocation of regulation 11
15. Amendment of regulation 13
16. New regulation 13A

17. New regulation 13B
18. Amendment of regulation 14
19. Amendment of regulation 15
20. Revocation of regulation 16
21. Amendment of regulation 17
22. Amendment of regulation 20

CHAPTER 3

Amendments to Part 3 (Reception of patients in Scotland)

23. Amendment of regulation 24
24. Amendment of regulation 33
25. Amendment of regulation 36
26. New regulation 36A
27. Amendment of regulation 38
28. Amendment of regulation 41
29. Revocation of regulation 45

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 290 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^(b), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

PART 1

Introductory

Citation

1. These Regulations may be cited as the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Amendment Regulations 2017.

Commencement

2. These Regulations come into force on 30th June 2017.

Meaning of “principal Regulations”

3. In these Regulations, “the principal Regulations” means the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005^(c).

Saving provision in relation to removal of patients from Scotland

4.—(1) The amendments made to the principal Regulations by Chapter 2 of Part 2 do not apply in relation to a case in which notice under regulation 5(1) of the principal Regulations (notification

(a) 2003 asp 13; section 290 is amended by S.S.I. 2004/533, and by the Mental Health (Scotland) Act 2015 (asp 9), section 32. Section 326(2) of the 2003 Act makes further provision about the exercise of the powers conferred by section 290.

(b) Section 326(4) is modified by the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), schedule 3, paragraph 5.

(c) S.S.I. 2005/467.

of proposed application for a warrant for a patient’s removal from Scotland) was given before 30th June 2017.

(2) But paragraph (1) does not apply to the amendment made by regulation 22.

Saving provision in relation to reception of patients in Scotland

5. The amendment made to the principal Regulations by regulation 23 does not apply in relation to a request for consent to the reception of a patient in Scotland made before 30th June 2017.

PART 2

Amendments to the principal Regulations

CHAPTER 1

Amendment to Part 1 (General)

Amendment of regulation 1

6. In regulation 1(2) of the principal Regulations (interpretation), in the definition of “relevant territory”—

- (a) omit the “or” immediately preceding paragraph (d); and
- (b) at the end of that paragraph insert—
 - “, or
 - (e) a member State of the European Union (apart from the United Kingdom)”.

CHAPTER 2

Amendments to Part 2 (Removal of patients from Scotland)

Amendment of regulation 5

7.—(1) Regulation 5 of the principal Regulations (responsible medical officer: notification of proposed application) is amended as follows.

(2) In paragraph (1), for sub-paragraph (b) substitute—

“(b) either—

- (i) the patient’s named person; or
- (ii) if the patient does not have a named person—
 - (aa) the patient’s primary carer; and
 - (ab) the patient’s nearest relative (if the responsible medical officer knows who that is);”.

(3) For paragraph (2) substitute—

“(2) A notice under this regulation, other than the notice given to the mental health officer, is to invite the recipient of the notice to inform the Scottish Ministers, within 7 days of the day on which the notice is given, of any wishes or preferences that person has in relation to the proposal to remove the patient from Scotland.”.

Amendment of regulation 7

8. In regulation 7(2) of the principal Regulations (warrant for removal: application by responsible medical officer), for sub-paragraphs (a) to (c) substitute—

“(aa) the names and addresses of the persons notified under sub-paragraphs (a) to (d) of regulation 5(1);”.

New regulation 7A

9. After regulation 7 of the principal Regulations insert—

“Application for fast-track removal with consent

7A.—(1) In an application under regulation 7 for a warrant, the responsible medical officer may request that the warrant authorise the patient’s removal from Scotland before the end of the standstill period.

(2) The responsible medical officer may make the request mentioned in paragraph (1) only if—

- (a) the place to which it is proposed the patient will go after being removed from Scotland is in—
 - (i) England;
 - (ii) Wales;
 - (iii) Northern Ireland;
 - (iv) any of the Channel Islands; or
 - (v) the Isle of Man;
- (b) the patient has given written consent to being removed before the end of the standstill period;
- (c) an approved medical practitioner, who is not the patient’s responsible medical officer, has certified that the patient is capable of giving that consent; and
- (d) the patient’s named person (if the patient has one) has given written consent to the patient being removed before the end of the standstill period.

(3) If the responsible medical officer intends to make the request mentioned in paragraph (1), the responsible medical officer must inform the Commission of that fact before making the application.

(4) An application under regulation 7 which includes the request mentioned in paragraph (1) must—

- (a) state the date on which the responsible medical officer informed the Commission of the officer’s intention to make the request as required by paragraph (3); and
- (b) be accompanied by a copy of the following documents—
 - (i) the written consent of the patient referred to in paragraph (2)(b);
 - (ii) the certificate referred to in paragraph (2)(c); and
 - (iii) if the patient has a named person, the written consent referred to in paragraph (2)(d).”.

Amendment of regulation 8

10. In regulation 8(1) of the principal Regulations (information and factors to be considered in respect of an application for a warrant for removal), for the words from “the information” to the end substitute—

- “(a) the information provided by the responsible medical officer in the application; and
- (b) any wishes or preferences in relation to the proposal to remove the patient from Scotland of which the Scottish Ministers have been informed by a person invited to do so in a notice under regulation 5.”.

Amendment of regulation 9

11.—(1) Regulation 9 of the principal Regulations (notification of the decision) is amended as follows.

(2) For paragraph (1)(b) substitute—

“(aa) any other person named in accordance with regulation 7(2)(aa) in the application which led to the decision;”.

(3) For paragraph (2) substitute—

“(2) The notice under paragraph (1) to—

- (a) the patient; and
- (b) the patient’s named person (if the patient has one),

must advise the recipient of the right to appeal under regulation 13.

(3) In a case where the patient does not have a named person, the notice under paragraph (1) to—

- (a) the patient’s primary carer;
- (b) the patient’s nearest relative;
- (c) any guardian of the patient; and
- (d) any welfare attorney of the patient,

must advise the recipient that the recipient may have authority to initiate an appeal under regulation 13.

(4) If the application made to the Scottish Ministers under regulation 7 included a request of the kind mentioned in regulation 7A(1), the notice under paragraph (1) must state that the request was made.”.

Amendment of regulation 10

12.—(1) Regulation 10 of the principal Regulations (warrant for removal) is amended as follows.

(2) Omit the following—

- (a) paragraph (4); and
- (b) paragraphs (6) to (11).

(3) For paragraph (5)(b) substitute—

“(aa) any other person named in accordance with regulation 7(2)(aa) in the application which led to the decision that the patient should be removed from Scotland;”.

New regulations 10A to 10E

13. After regulation 10 insert—

“Warrant for fast-track removal with consent

10A.—(1) If the conditions in paragraph (2) are met, the Scottish Ministers are to state in a warrant under regulation 10 that—

- (a) it authorises the patient’s removal from Scotland before the end of the standstill period; but
- (b) that is subject to the patient not withdrawing consent and there being neither an appeal nor a reference to the Tribunal under regulation 13 or 17 respectively.

(2) The conditions for the purpose of paragraph (1) are—

- (a) that the application for the warrant—
 - (i) requests that the warrant authorise the patient’s removal before the end of the standstill period; and
 - (ii) complies with the requirements set out in regulation 7A(4);

- (b) more than 3 days have elapsed since the responsible medical officer informed the Commission of the officer's intention to make the request mentioned in subparagraph (a)(i); and
- (c) the Scottish Ministers have not received—
 - (i) notice under regulation 13B(1) of an appeal against the proposed removal of the patient from Scotland; or
 - (ii) notice under regulation 17(2) of a reference by the Commission in respect of the proposed removal of the patient from Scotland.

Removal in accordance with warrant

10B.—(1) A patient may be removed from Scotland under the authority of a warrant under regulation 10 at any time between—

- (a) the end of the standstill period; and
- (b) the end of the day that falls 7 days after the last day of the standstill period.

(2) A patient may be removed from Scotland under the authority of a warrant under regulation 10 before the end of the standstill period if—

- (a) the warrant states that it authorises the patient's removal from Scotland before the end of the standstill period;
- (b) the proposed removal of the patient from Scotland has not been appealed against under regulation 13;
- (c) the Commission has not made a reference to the Tribunal in respect of the proposed removal under regulation 17; and
- (d) the patient has not indicated an unwillingness to be removed from Scotland before the end of the standstill period.

(3) For the purposes of this regulation, the end of the standstill period in relation to a warrant is to be determined in accordance with regulations 10C to 10E.

End of the standstill period where removal unchallenged

10C.—(1) The standstill period referred to in regulation 10B comes to an end in accordance with this regulation where—

- (a) the proposed removal of the patient from Scotland has not been appealed against to the Tribunal under regulation 13; and
- (b) the Commission has not made a reference to the Tribunal in respect of the proposed removal under regulation 17.

(2) Once the standstill period has come to an end in accordance with this regulation, it remains at an end despite an appeal or reference to the Tribunal subsequently being made.

(3) If the patient is to be transferred to a place within the United Kingdom, the standstill period ends at the end of the day which falls—

- (a) 7 days after the warrant is issued; or
- (b) 3 working days after the warrant is issued if—
 - (i) the Scottish Ministers consider it necessary that the patient be removed from Scotland as a matter of urgency; and
 - (ii) the Commission agrees that is necessary.

(4) If the patient is to be transferred to a place outwith the United Kingdom, the standstill period ends—

- (a) at the end of the day which falls 28 days after the warrant is issued;

- (b) at the end of the day which falls 7 days after the warrant is issued if—
 - (i) the Scottish Ministers consider it necessary that the patient be removed from Scotland as a matter of urgency; and
 - (ii) the Commission agrees that is necessary; or
 - (c) if the Scottish Ministers specify a day in the warrant in accordance with paragraph (5), at the end of the specified day.
- (5) The Scottish Ministers—
- (a) may specify a day under paragraph (4)(c) only if they are satisfied that—
 - (i) appropriate care and treatment would be given to the patient at the place to which the patient is to be transferred were the patient to arrive there on that day; and
 - (ii) it would be in the patient’s best interests to arrive there earlier than the patient would be likely to arrive were a day not specified under paragraph (4)(c);
 - (b) may not specify a day under paragraph (4)(c) which falls fewer than 7 days after the warrant is issued;
 - (c) must, if they specify a day under paragraph (4)(c), draw the fact that they have done so to the Commission’s attention.
- (6) For the purposes of paragraph (3), a working day is any day which is not a—
- (a) Saturday;
 - (b) Sunday; or
 - (c) bank holiday in Scotland under the Banking and Financial Dealings Act 1971(a).

End of the standstill period following appeal against removal

10D.—(1) The standstill period referred to in regulation 10B comes to an end in accordance with this regulation if (before the period has come to an end in accordance with regulation 10C) the proposed removal of the patient from Scotland has been appealed against to the Tribunal under regulation 13.

(2) The standstill period ends at the end of the day on which the Scottish Ministers give notice to the patient’s responsible medical officer that the period has ended.

- (3) If—
- (a) the Tribunal makes an order that the proposed removal shall not take place; and
 - (b) that decision by the Tribunal is appealed against,

the Scottish Ministers are to give the notice mentioned in paragraph (2) as soon as practicable after that appeal has been finally determined.

- (4) If—
- (a) the Tribunal refuses to make an order that the proposed removal shall not take place; and
 - (b) that decision by the Tribunal is appealed against within 21 days of it being made,

the Scottish Ministers are to give the notice mentioned in paragraph (2) as soon as practicable after that appeal has been finally determined.

- (5) If—
- (a) the Tribunal refuses to make an order that the proposed removal shall not take place; and

(a) 1971 c.80; which has been relevantly amended by the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2), section 1.

- (b) that decision by the Tribunal is not appealed against within 21 days of it being made,

the Scottish Ministers are to give the notice mentioned in paragraph (2) as soon as practicable after that period of 21 days has ended.

(6) But, the Scottish Ministers may give the notice mentioned in paragraph (2) before the end of the 21 day period referred to in paragraph (5) if—

- (a) the patient consents in writing to being removed from Scotland without delay;
- (b) an approved medical practitioner, who is not the patient’s responsible medical officer, certifies that the patient is capable of giving that consent; and
- (c) the patient’s named person (if the patient has one) gives written consent to the patient being removed from Scotland without delay.

(7) The references in this regulation to an appeal against a decision by the Tribunal are to an appeal under section 320 or 322 of the 2003 Act (as applied by these Regulations).

(8) For the purposes of this regulation, where an appeal against a decision by the Tribunal is made to the sheriff principal, the appeal is finally determined—

- (a) at the end of the period of 21 days beginning on the day that the sheriff principal decides the appeal; or
- (b) if, before the end of that period, the sheriff principal’s decision is appealed against to the Court of Session, when the Court has finally determined that further appeal.

End of standstill period following reference by Commission

10E.—(1) The standstill period referred to in regulation 10B comes to an end in accordance with this regulation if—

- (a) (before the period has come to an end in accordance with regulation 10C) the Commission makes a reference to the Tribunal under regulation 17 in respect of the proposed removal; and
- (b) the proposed removal of the patient from Scotland has not been appealed against to the Tribunal under regulation 13.

(2) The standstill period ends at the end of the day on which the Scottish Ministers give notice to the patient’s responsible medical officer that the period has ended.

(3) The Scottish Ministers are to give the notice mentioned in paragraph (2) as soon as practicable after the reference to the Tribunal has been finally determined.”.

Revocation of regulation 11

14. Omit regulation 11 of the principal Regulations (suspension of effect of warrant).

Amendment of regulation 13

15.—(1) Regulation 13 of the principal Regulations (appeal to Tribunal) is amended as follows.

(2) For paragraph (1) substitute—

“(1) Following a decision under regulation 8 that a patient be removed from Scotland, an appeal against the proposed removal may be made to the Tribunal by—

- (a) the patient; or
- (b) the patient’s named person.”.

(3) After paragraph (2) insert—

“(3) An appeal may not be made to the Tribunal under paragraph (1) after the patient has been removed from Scotland.”.

New regulation 13A

16. After regulation 13 of the principal Regulations insert—

“Ability to initiate appeal if no named person

13A.—(1) An appeal under regulation 13 may be initiated by one of the persons mentioned in paragraph (2) if—

- (a) the patient does not have a named person;
- (b) the patient has attained the age of 16 years; and
- (c) the patient is incapable in relation to a decision as to whether to initiate an appeal.

(2) The persons who may initiate an appeal by virtue of paragraph (1) are—

- (a) any guardian of the patient;
- (b) any welfare attorney of the patient; and
- (c) unless the patient has made a written declaration precluding the person (or all persons) from initiating the appeal—
 - (i) the patient’s primary carer; and
 - (ii) the patient’s nearest relative.

(3) In paragraph (1)(b), “incapable” has the same meaning as in section 250 of the 2003 Act.

(4) Subsections (2), (3) to (5) and (7) of section 250 of the 2003 Act apply to a declaration mentioned in paragraph (2)(c) as they apply to a nomination to which subsection (1) of that section relates (with that section to be read accordingly).”.

New regulation 13B

17. After regulation 13A of the principal Regulations insert—

“Tribunal’s duties to notify Scottish Ministers

13B.—(1) The Tribunal must notify the Scottish Ministers of an appeal under regulation 13 as soon as practicable after the appeal is made.

(2) The Tribunal must notify the Scottish Ministers of its decision in an appeal under regulation 13 as soon as practicable after the decision is made.”.

Amendment of regulation 14

18.—(1) Regulation 14 of the principal Regulations (appeals to the sheriff principal and Court of Session against certain decisions) is amended as follows.

(2) In paragraph (1), for “regulation 12(2)” substitute “regulation 13(2)”.

(3) In paragraph (2)(a), for “paragraphs (b) to” substitute “paragraphs (c) and”.

(4) After paragraph (3) insert—

“(4) In relation to a case in which section 320 or 321 of the 2003 Act applies by virtue of this regulation, subsection (5) of section 257A of the 2003 Act^(a) (ability to act if no named person) is to be ignored.”.

(a) Section 257A of the Mental Health (Care and Treatment) (Scotland) Act 2003 is inserted by the Mental Health (Scotland) Act 2015, section 25.

Amendment of regulation 15

19.—(1) Regulation 15 of the principal Regulations (appeal to the Court of Session against certain decisions of the Tribunal) is amended as follows.

(2) In paragraph (2)(a), for “paragraphs (b) to” substitute “paragraphs (c) and”.

(3) After paragraph (2) insert—

“(3) In relation to a case in which section 322 applies by virtue of this regulation, subsection (5) of section 257A of the 2003 Act (ability to act if no named person) is to be ignored.”.

Revocation of regulation 16

20. Omit regulation 16 of the principal Regulations (delay of removal pending further appeal).

Amendment of regulation 17

21. In regulation 17(2) of the principal Regulations (reference to Tribunal by Commission), for sub-paragraphs (b) and (c) substitute—

“(b) either—

(i) the patient’s named person; or

(ii) if the patient does not have a named person—

(aa) the patient’s primary carer; and

(ab) the patient’s nearest relative;”.

Amendment of regulation 20

22.—(1) Regulation 20 of the principal Regulations (notification requirements: post removal) is amended as follows.

(2) In paragraph (1), after “officer” insert “, the Scottish Ministers”.

(3) Omit paragraph (3).

CHAPTER 3

Amendments to Part 3 (Reception of patients in Scotland)

Amendment of regulation 24

23. In regulation 24(4) of the principal Regulations (reception in Scotland: consent), after sub-paragraph (b) insert—

“(ba) the name and address of any guardian of the patient;

(bb) the name and address of any welfare attorney of the patient;”.

Amendment of regulation 33

24.—(1) Regulation 33 of the principal Regulations (patients subject to compulsory treatment order) is amended as follows.

(2) The text of the regulation, as it was immediately before this regulation came into force, becomes paragraph (1).

(3) After that paragraph insert—

“(2) Where a patient is being treated as if subject to a compulsory treatment order by virtue of regulation 30, an application may be made in respect of that order under section 100 of the 2003 Act (application by patient etc. for revocation or variation of order) before the end of the 3 month period mentioned in subsection (4) of that section.

(3) But an application may not be made by virtue of paragraph (2) until the patient’s responsible medical officer has decided not to make a determination under regulation 38 revoking the order.”.

Amendment of regulation 36

25. In regulation 36 of the principal Regulations (assessment of patient: post transfer), omit paragraph (7).

New regulation 36A

26. After regulation 36 of the principal Regulations insert—

“Interpretation of regulation 36(3): conflict of interest

36A.—(1) For the purposes of regulation 36(3), there is to be taken to be a conflict of interest in relation to the medical examination of a patient if the medical practitioner who carries out the examination is related to the patient in any degree specified in the schedule of the Conflict of Interest Regulations.

(2) Any enactment which governs the interpretation of the schedule of the Conflict of Interest Regulations for those Regulations’ own purposes also governs the interpretation of the schedule for the purposes of regulation 36(3).

(3) In this regulation, “the Conflict of Interest Regulations” means the Mental Health (Conflict of Interest) (Scotland) Regulations 2017(a).”.

Amendment of regulation 38

27.—(1) Regulation 38 of the principal Regulations (responsible medical officer’s duty to revoke: interim compulsory treatment order, compulsory treatment order and compulsion order) is amended as follows.

(2) In paragraph (2)(a), for “regulation 36(4)(c)” substitute “the applicable sub-paragraph of regulation 36(4)”.

(3) After paragraph (3) insert—

“(4) In paragraph (2)(a), “the applicable sub-paragraph of regulation 36(4)” means—

- (a) in the case of a patient subject to a compulsion order, sub-paragraph (a) of regulation 36(4);
- (b) in the case of a patient subject to an interim compulsory treatment order or a compulsory treatment order, sub-paragraph (c) of regulation 36(4).”.

Amendment of regulation 41

28.—(1) Regulation 41 of the principal Regulations (notification requirements: post assessment) is amended as follows.

(2) After paragraph (3)(b) insert—

- “(ba) any guardian of the patient;
- (bb) any welfare attorney of the patient;
- (bc) any person named in the request for consent to the patient’s reception in Scotland as the patient’s nearest relative or primary carer (but see paragraphs (3A) to (3C));”.

(a) S.S.I. 2017/xx.

(3) After paragraph (3) insert—

“(3A) Before giving notification under paragraph (2) to a person named as the patient’s nearest relative or primary carer, the managers of the receiving hospital must establish whether the patient objects to notification being given to that person.

(3B) If the patient objects to the person mentioned in paragraph (3A) being notified, the person is not to be notified under paragraph (2).

(3C) Paragraphs (3A) and (3B) do not apply where the person mentioned in paragraph (3A) is the patient’s named person, guardian or welfare attorney.”.

Revocation of regulation 45

29. Omit regulation 45 of the principal Regulations (visits to patients: duty on Commission).

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations make provision about the transfer to and from Scotland of mental health patients who are subject to a detention requirement or are otherwise in hospital.

In this note, “the principal Regulations” means the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005.

Transfers of patients from Scotland

Extending range of people informed about and able to appeal transfer

In its unamended form, regulation 13 of the principal Regulations gives the patient alone a right to appeal to the Mental Health Tribunal for Scotland against a decision to transfer the patient out of Scotland.

Regulation 15 amends the principal Regulations so as to extend that right of appeal to the patient’s named person.

Regulation 16 further amends the principal Regulations so that in a case where the patient does not have a named person an appeal to the Tribunal may, in certain circumstances, be initiated by the patient’s primary carer, nearest relative, guardian or welfare attorney.

Regulations 18 and 19 amend the principal Regulations so that named persons and (in certain circumstances) primary carers, relatives, guardians and welfare attorneys can take a further appeal from a decision of the Tribunal under regulation 13 to the courts.

Regulations 7, 8, 11(2), 12(3) and 21 amend the principal Regulations so that people who may have an appeal right by virtue of the regulations mentioned above are given information at various points in the transfer process leading up to the patient’s removal from Scotland. Regulation 11(3) ensures those people are informed that they may be able to appeal against a transfer decision.

Regulations 7(3) and 10 provide for those people to be able to make representations to the Scottish Ministers directly ahead of the Ministers deciding whether or not to authorise a patient’s transfer.

For definitions of the terms “named person”, “primary carer”, “guardian” and “welfare attorney” see section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003. The term “nearest relative” is defined by section 254 of that Act.

Removal warrants

Regulations 9 and 13 concern the period during which a warrant authorising a patient’s removal from Scotland can and cannot be executed.

Regulations 12(2), 14 and 20 revoke provisions of the principal Regulations which are made defunct by the new provisions inserted into the principal Regulations by regulation 13.

Notifications to the Scottish Ministers

Regulation 17 amends the principal Regulations to place the Tribunal under a duty to keep the Scottish Ministers apprised of the making and determination of appeals under regulation 13 of the principal Regulations.

Regulation 22 amends regulation 20 of the principal Regulations so that the Scottish Ministers must be notified whenever a patient is transferred out of Scotland. In its unamended form, regulation 20 of the principal Regulations required the giving of notification to the Scottish Ministers in some cases only.

Saving provision

Subject to one exception, regulation 4 provides that the amendments made to the principal Regulations concerning the transfer of patients from Scotland do not affect cases where the

transfer process had begun in earnest before 30th June 2017 (being the date on which the amendments come into force). In a case where, before that date, the transfer process had reached the stage of notice being sent under regulation 5 of the principal Regulations (which means the notice was sent in accordance with that regulation in its unamended form) the whole transfer process will be dealt with in accordance with the principal Regulations in their unamended form.

The exception to the general effect of regulation 4 is regulation 22. The amendment it makes to regulation 20 of the principal Regulations will apply in all cases where a patient is transferred from Scotland after the date the Regulations' come into force regardless of when the transfer process began.

Transfer of patients into Scotland

Transfers from other EU States

The principal Regulations provide for a patient from a 'relevant territory' to be transferred to a hospital in Scotland. Prior to regulation 6 coming into force, the principal Regulations defined 'relevant territory' to mean the other parts of the United Kingdom, any of the Channel Islands and the Isle of Man. Regulation 6 extends the definition of 'relevant territory' so that patients can be transferred into Scotland from other European Union member States too.

Requirements for request for consent to transfer

Regulation 23 amends the principal Regulations so that requests for consent to transfer a patient into Scotland have to include details of any guardian or welfare attorney appointed to the patient.

Regulation 5 stops the amendment made by regulation 23 from applying to requests for consent made before the Regulations come into force. This means that a request will not be ignored because it does not include details of a patient's guardian or welfare attorney if the request was made before it became a requirement for those details to be included.

Appeal against compulsory treatment order following transfer

Regulation 24 amends the principal Regulations so that a patient who has been transferred into Scotland and is being treated as if subject to a compulsory treatment order can appeal to the Mental Health Tribunal for Scotland against the order earlier than would be the case had the patient become subject to a compulsory treatment order on the transfer date under the ordinary domestic process (as opposed to the cross-border transfer process).

Conflicts of interest

Regulations 25 and 26 amend the principal Regulations in consequence of the revocation of the Mental Health (Conflict of Interest) (Scotland) (No. 2) Regulations 2005(a) by the Mental Health (Conflict of Interest) (Scotland) Regulations 2017.

Minor correction to regulation 38 of the principal Regulations

Regulation 27 corrects an inaccurate cross-reference in regulation 38 of the principal Regulations.

Notice following transfer

Under regulation 41 of the principal Regulations, following a patient's transfer into Scotland the managers of the hospital in which the patient is detained must give notice of various things (including the date on which the transfer took place) to certain persons. Regulation 28 extends the list of persons to whom that notice is to be given to include any guardian or welfare attorney of the patient and, unless the patient objects, the patient's nearest relative and primary carer.

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

Mental Welfare Commission visits following transfer

Regulation 45 of the principal Regulations placed the Mental Welfare Commission for Scotland under a duty to arrange a visit to every patient transferred into Scotland within 6 months of the transfer taking place. That duty is abolished by regulation 29.

The Commission continues to have the power under section 13 of the Mental Health (Care and Treatment) (Scotland) Act 2003 to arrange for a visit to be made to a patient transferred into Scotland at any time the Commission considers appropriate.