



SCOTTISH EXECUTIVE

Health Department
Service Policy and Planning Directorate

Dear Colleague

**MENTAL HEALTH (CARE AND TREATMENT)
(SCOTLAND) ACT 2003:
THE MENTAL HEALTH (CROSS-BORDER
TRANSFER: PATIENTS SUBJECT TO DETENTION
REQUIREMENT OR OTHERWISE IN HOSPITAL)
(SCOTLAND) REGULATIONS 2005**

The provisions of the new Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act) will come into force on 5 October 2005.

This letter sets out the procedures to be followed where a patient subject to the formal provisions of the 2003 Act is to be transferred either into or outwith Scotland. The process in relation to the transfer of informal patients from Scotland outwith the United Kingdom is also covered.

It is important to highlight that the transfer of such patients can only take place with the authority of the Scottish Ministers.

Annex 1 of this letter explains the transitional arrangements for transfers which have already been authorised by the Scottish Ministers or are in the process of being arranged under the current Mental Health (Scotland) Act 1984. It also provides a brief overview of the new timescales and contact details for applications to the Scottish Ministers.

Annex 2 provides more detailed guidance on the correct procedures to be followed under the 2003 Act.

Annex 3 contains a short pro-forma for application to the Scottish Ministers in relation to the cross border transfer of non-restricted patients.

Yours sincerely

IAN GORDON
Director of Service Policy and Planning

30th September 2005

Addresses

For action

Chief Executives, Health Boards
Chief Executives, Local Authorities
Directors of Social Work/Chief Social
Work Officers
General Manager, State Hospitals
Board for Scotland
Scottish Secretary, British Medical
Association
Royal College of General
Practitioners, Scottish Division
British Psychological Society,
Scottish Division
Scottish Board, College of
Occupational therapists
Scottish Social Services Council
Scottish Commission for the
Regulation of Care
Law Society of Scotland

For information

Secretary, Mental Welfare
Commission for Scotland
Director, Scottish Association for
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Background and description of legislative provisions

1. The new Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act), to be introduced on 5 October 2005, and its associated regulations (**The Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005**) provides the legislative framework for the transfer in and out of Scotland of patients who are subject to the formal provisions of the 2003 Act. The 2003 Act also makes provision for the transfer of informal patients from Scotland outwith the United Kingdom.

2. A patient subject to the 2003 Act or its equivalent may be removed from one part of the UK to another only on the authority of the appropriate authorising Minister or Department. Where a patient is to be transferred outwith Scotland, the patient's RMO must make application for a warrant from the Scottish Ministers. This warrant both authorises the transfer and provides authority for the continuous detention of the patient while he or she is being transferred.

Transitional provisions on the introduction of the 2003 Act

3. The Mental Health (Care and Treatment) (Scotland Act 2003 (Transitional and Savings Provisions) Order 2005, SSI 2005/452 provides that:

- authority given under sections 77 or 81 of the Mental Health (Scotland) Act 1984 (the 1984 Act), for the transfer of a patient from Scotland to England, Wales or Northern Ireland and any directions given for the conveyance of the patient, will remain in force until that patient has reached his/her destination.
- where the transfer of a patient out of Scotland has been agreed but where relatives and the Mental Welfare Commission for Scotland (the Commission) have not been notified under section 87(2) of the 1984 Act, this section will continue in force until the patient has reached his/her destination.
- where Scottish Ministers have agreed to a request for the transfer of a patient into Scotland under part 7 of the 1984 Act but the transfer has not taken place on 5 October, the consent will be deemed to have been given under section 290 of the 2003 Act and any further arrangements should be made under the provisions of the 2003 Act.
- where on or after 5 October, the RMO has not submitted a report to the hospital managers, on a patient transferred into Scotland as required by section 88 of the 1984 Act, that patient will be subject to the provisions of section 290 of the 2003 Act and the report submitted under that section as required.
- where a warrant has been issued under section 83 of the 1984 Act to transfer a patient who is neither a British citizen nor a Commonwealth citizen having the right to live in the UK under section 2(1) (b) of the Immigration Act 1971 and the transfer has not taken place on 5 October, the warrant and any directions made will remain in force until the patient has arrived at their destination.

Timescales for requests

4. The Act provides that the RMO must notify specified parties of the proposed transfer and allow these persons 7 days to revert to him/her with their views on the proposed removal. Where any representations are received, these must be notified to the Scottish Ministers.

5. A warrant can not be issued by the Scottish Ministers without the consent from the country or territory to which the patient is to be removed. In addition, **there are no powers to enable Scottish Ministers to waive their notification requirements.** The RMO should therefore contact the Scottish Executive when the transfer is initially proposed. This would assist in ensuring that sufficient time is given for the necessary arrangements to be made for the transfer to proceed smoothly.

6. Suggested timescales are as follows:

To a place within the UK

- a minimum of 2 weeks before the date proposed for the patient's removal.
- where the patient is a restricted patient and a reduction in the level of security is sought, then a minimum of 6 weeks.

To a place outwith the UK

- a minimum of 5 weeks before the date proposed for the patient's removal.

Patient has provided consent to a transfer within the United Kingdom

- as much notice as possible, however preferably no later than 6 days before the date of the patient's removal.

In cases of urgent clinical necessity

- transfer within the United Kingdom – as much notice as possible however, for preference, at least 6 days before the date proposed for the patient's removal.
- removal to a place outwith the United Kingdom – again, as much notice as practicable however around 14 days before the date proposed for the removal would be acceptable.

Right of Appeal against proposed transfer

7. It should be noted that the 2003 Act introduces the right of appeal against a proposed transfer.

Further information

8. Further information about the 2003 Act, its associated regulations and also the Code of Practice can be obtained from the Mental Health Law Website at:

www.scotland.gov.uk/health/mentalhealthlaw

CROSS-BORDER TRANSFERS OF PATIENTS - OVERVIEW

1. Section 290 of The Mental Health (Care and Treatment)(Scotland) Act 2003 (the 2003 Act) and its associated regulations (**The Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005**), make provision for transfer of certain patients to and from Scotland, as follows:
 - the transfer from Scotland of a patient who is subject to any provision of the Act or to certain provisions of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act) which authorise a patient's detention in hospital, including the suspension of a measure requiring the patient's detention in hospital;
 - the transfer from Scotland to a place outwith the United Kingdom of an informal patient who is in hospital for the purpose of receiving medical treatment for mental disorder; that is a patient who is not formally subject to the 2003 Act or the 1995 Act;
 - the reception in Scotland of a person subject to corresponding measures in England, Wales, Northern Ireland, the Isle of Man or any of the Channel Islands and transferred from there;

Please note that the 2003 Act does not provide for the transfer of an informal patient from Scotland to another part of the United Kingdom nor of a patient outwith the United Kingdom when they are subject to the compulsory measures of the 2003 Act.

What practical considerations should be taken into account when transferring the patient?

2. Any transfer should be carefully planned well in advance. Some of the issues which should be considered by members of the patient's multi-disciplinary team and by the managers of both the sending and receiving hospitals include:
 - that it is in the best interests of the patient;
 - that the receiving hospital is willing to provide the patient with the care and treatment appropriate to their condition;
 - in the case of a patient aged under 18, that services are available in the receiving hospital which are appropriate to the needs of that patient;
 - that the Mental Health Division are informed of the proposed transfer at a sufficiently early stage in the process to enable the consent of the Scottish Ministers to be obtained to the proposed transfer.
 - in the case of restricted patients, Home Office approval is required. All requests to transfer a restricted patient must be routed through Branch 4 of Mental Health Division.
 - that, wherever possible, the patient is aware of the proposed transfer, that the patient fully understands any implications this may have for them, and that the

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patient is able to communicate their concerns, if any, about the proposed transfer;

- ensuring that the patient, their named person, and any relatives, carers, independent advocate and representatives have been informed of an agreed departure time in advance of the transfer, and ensuring that the patient is fully supported in preparing for the journey;
- ensuring that there is a clearly identified RMO in the receiving hospital;
- ensuring that staff in the receiving hospital are properly prepared for the patient's arrival and that time is taken to ensure that the patient can settle quickly into the new environment;
- ensuring that the receiving hospital has been informed of any relevant dates with respect to the Act's provisions, for example for consenting to medical treatment, or renewing a CTO;
- anticipating any difficulties in relation to the required level of security and possible absconding en route (in as far as this is possible) bearing in mind the importance of caring for the patient in the manner which involves the minimum restriction on the patient's freedom that is necessary in the circumstances;
- providing an appropriate, swift and comfortable means of transport which is also suitable for the provision of medication, where necessary.

Orders which transferring patients may be subject to

- an emergency detention certificate (section 36(1) of the 2003 Act- EDC);
- a suspension of authority to detain in relation to an emergency detention certificate (section 41(1) of the 2003 Act –EDC);
- a short term detention certificate (section 44(1) of the 2003 Act - SDC);
- a suspension of authority to detain in relation to a short term detention certificate (section 53(1) of the 2003 Act– SDC);
- an interim compulsory treatment order (section 65(2) of the 2003 Act - ICTO);
- a compulsory treatment order (section 64(4) of the 2003 Act - CTO);
- a suspension of authority to detain in relation to an interim compulsory treatment order or a compulsory treatment order (sections 127(1) or (3) of the 2003 Act– ICTO or CTO);a compulsion order which authorises the patient's detention in hospital (CO) (section 57A of the 1995 Act);
- a compulsion order and a restriction order (CORO) (sections 57A and 59 of the 1995 Act);
- a hospital direction (HD) (section 59A of the 1995 Act);
- a transfer for treatment direction (TTD) (section 136 of the 2003 Act);
- sections 221(2) or 224(2) of the 2003 Act- a suspension of authority to detain in relation to a CORO, HD or TTD;
- a compulsion order and a restriction order where the patient has been conditionally discharged (section 193(7)) and has not been recalled to hospital under section 202 of the 2003 Act.

Patient on suspension of measure authorising detention in hospital.

3. Where a patient is subject to a measure suspending the requirement for detention in hospital, they should be transferred direct to the receiving hospital and not to a home address or other institution. This will enable the patient's condition to be fully assessed at the receiving hospital. It is for the receiving doctor to decide how and where the patient should be cared for. However it would be best practice to consult the multidisciplinary team prior to making that decision. It would also be best practice to ensure that the patient fully understands the possible personal implications of the transfer prior to starting arrangements for such a transfer.

Patient on a community based order

4. Section 289 makes provision for regulations to set out the conditions and procedures for the transfer from Scotland to a place outwith Scotland of a patient who is subject to a CTO or CO which does not specify that patient's detention in hospital. Regulations detailing the process of transfer for such community based patients will be made at such a time as equivalent provisions are enacted in the rest of the UK.
5. At present, it appears unlikely that a community based patient subject to a CTO or a CO would request a transfer to a jurisdiction outwith Scotland given that there is no directly equivalent provision in other parts of the United Kingdom for community based patients. Where a patient who is subject to a community based CTO or CO requests a transfer to other parts of the UK, the RMO should consider whether the patient should be discharged prior to an informal transfer or become a hospital based patient and transferred under the provisions of s290 of the 2003 Act.

Orders exempt from transfer provisions

6. Patients subject to the following orders, or corresponding or similar measures outwith Scotland, may not be transferred given that they are subject to ongoing criminal justice proceedings:
 - an assessment order (section 52D of the 1995 Act);
 - a treatment order (section 52M of the 1995 Act);
 - an interim compulsion order (section 53 of the 1995 Act);
 - a temporary compulsion order (section 54(1)(c) of the 1995 Act ;
 - remand for inquiry into the person's mental condition (section 200(2) of the 1995 Act).

TRANSFER OF PATIENTS FROM SCOTLAND

Duties of the RMO – prior to making application

7. Where the RMO considers that it may be appropriate to make an application to transfer a patient from Scotland, he/she must, as soon as practicable, consult the designated MHO and such other persons as the RMO considers appropriate. Best practice would be for the RMO to also discuss the proposed transfer with the receiving hospital to ensure that they are prepared to accept the patient. Where it is proposed to transfer a restricted patient, it would also be best practice to consult the official in Branch 4, Mental Health Division.
8. In the case of an informal patient who is to be transferred outwith the United Kingdom, the RMO must also inform the relevant local authority to enable an MHO to be designated responsible for the patient's case.
9. If, after taking into consideration the views of the persons mentioned in paragraph 7 above, the RMO considers that an application is appropriate he/she must give notice as soon as practicable to:
 - the patient;
 - the patient's named person;
 - the patient's primary carer where the patient is in hospital being treated for mental disorder other than by virtue of the 1995 Act or the 2003 Act (i.e. an informal patient);
 - any guardian of the patient;
 - any welfare attorney of the patient; and
 - the mental health officer (MHO).

The RMO must allow these persons 7 days to provide him/her with their views on the proposed transfer.

Notice to the patient

10. The notice to the patient must also advise him/her that if the patient has a particular wish or preference that he/she would like the Scottish Ministers to take into consideration, then the patient must inform the Scottish Ministers within 7 days of the day on which the notification was received. The patient may do this either directly to the Scottish Ministers or via their RMO.

Duties of local authority – prior to application

11. Where the local authority has received notification from the RMO that an informal patient is to be transferred from Scotland to a place outwith the United

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Kingdom, they must designate an MHO to be responsible for that patient's case. The relevant local authority is:

- if the patient was living in Scotland at the time, the local authority for the area in which the patient was resident before being admitted to hospital; or
- 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.

(further information of the designation of MHOs is contained in volume 1, chapter 9 of the code of practice)

Responsibilities of the MHO – prior to the application

12. As soon as practicable after being notified, and in any event no later than 7 days after being notified, the MHO must comply with a number of requirements, these are:

- interviewing the patient and informing them of their rights in relation to the application
- informing the patient of their right to advocacy services under section 259 of the Act and ensuring that the patient has the opportunity to use these services; *(Further information on independent advocacy is contained in volume 1, chapter 6 of the code of practice)*
- informing the patient's RMO if he/she agrees or disagrees that the application should be made: and
- where the MHO disagrees with the application proposed, to provide a reason why they consider this to be the case and of any other matters the MHO considers to be relevant.

Making the Application – the RMO

13. The RMO must make the application. If, taking into consideration the views expressed by the MHO and of the persons listed in paragraph 9 above, the RMO is satisfied that an application should be made to the Scottish Ministers for a warrant for the transfer of the patient he/she may make such an application. The application must state:

- the name and address of the patient
- the name and address of the patient's named person: or
- where the patient is an informal patient who is to be transferred outwith the United Kingdom, the patient's primary carer
- the reason for making the application
- the arrangements for treatment, care or services which would be available for the patient in the place to which it is proposed that the patient is to go after being transferred from Scotland

- whether the MHO agreed, or disagreed with the application, and if the MHO disagreed, the reasons for the disagreement
- whether the persons notified at paragraph 9 above made any representation on the proposed transfer and the nature of those representations; and
- any other matters that the RMO considers relevant.

Timescales for making the application

14. Scottish Ministers are required to obtain consent to the transfer from the country or territory to which it is proposed that the patient be transferred. There are no powers to enable the notification requirements to be waived. The RMO should therefore contact the Mental Health Division at an early stage in the process. This will assist in ensuring that the Scottish Ministers authority may be obtained prior to the proposed date of transfer.

15. In the case of restricted patients the Home Office require full background details and Scottish Ministers may also have to be personally consulted.

16. Suggested timescales for applications to the Scottish Ministers are as follows:

to a place within the UK

- a minimum of 2 weeks before the date proposed for the patient's transfer.
- where the patient is a restricted patient, a minimum of 6 weeks prior to the proposed date of the transfer.

to a place outwith the UK

- a minimum of 5 weeks before the date proposed for the patient's transfer.

Patient has provided consent to a transfer within the United Kingdom

- as much notice as possible, however preferably no later than 6 days before the date of the patient's transfer.

In cases of urgent clinical necessity

- transfer within the United Kingdom –
as much notice as possible however, for preference, at least 6 days before the date proposed for the patient's transfer.
- transfer to a place outwith the United Kingdom –
again, as much notice as practicable however around 14 days before the date proposed for the transfer would be acceptable.

The role of Scottish Ministers

17. Scottish Ministers, when deciding whether to authorise an application, must consider a number of factors including:
- the best interests of the patient
 - any wish or preference that the patient has notified to Scottish Ministers
 - the patient's security after being transferred from Scotland,
 - the measures, treatment, care or services which will be available for the patient once transferred,
 - where the patient is an informal patient and is to be transferred outwith the United Kingdom, the treatment for mental disorder corresponding or similar to that which the patient is receiving in hospital
 - any risk to the safety of any person.
1. 18. Where Scottish Ministers are not satisfied that they have sufficient information to enable them to make a decision, they may request such further information from the RMO as they think fit.

Scottish Ministers'- authorisation

19. Where Scottish Ministers decide that a patient should be transferred from Scotland, they must give notice of the decision immediately to the following persons:
- the patient
 - the patient's named person
 - the RMO
 - the MHO
 - the Commission; and
 - the country or territory to which the patient should be transferred.
20. Notice to the patient will include information on the patient's right of appeal to the Tribunal against the Scottish Ministers' decision. The patient may appeal against the transfer at any time between being notified and the transfer taking place. (For information on the provisions for appeals, see paragraphs 29 - 35)
21. Where the transfer is to proceed, the Scottish Ministers will issue a warrant which authorises the patient's transfer. Regulations prescribe that no warrant shall be issued until consent has been obtained from the country or territory to which it is proposed that the patient be transferred.
22. In issuing a warrant for the transfer, the Scottish Ministers may:
- give directions for the patient's conveyance to the patient's destination for the transfer from Scotland, and/or

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- arrange for the patient's RMO or the managers of the hospital in Scotland where the patient is currently being detained or otherwise being given treatment, to give such directions

Scottish Ministers must consult with the Commission and obtain the Commission's agreement prior to authorising the transfer. In addition, Scottish Ministers must formally notify the Commission within these timescales.

23. A copy of the warrant will immediately be sent by the Scottish Ministers to the persons listed at paragraph 19 above.

Warrant – effective dates

24. The warrant will specify an “effective date” on or after which the transfer will take place. Where a patient is transferred from Scotland within the UK, the effective date on the warrant may not be sooner than 7 days from the date of Minister's decision.
25. Where the transfer is to a place outwith the UK, the effective date on the warrant may not be sooner than 28 days from the date of Ministers' decision on the transfer.
26. In a case of urgent clinical necessity or when the patient consents the effective date for transfers within the UK may be earlier but may be no sooner than 3 working days after Ministers' decision on the transfer. For those transferring outwith the UK, the effective date may be no sooner than 7 days from decision by Ministers.
27. Scottish Ministers must notify the Mental Welfare Commission for Scotland within 3 working days that the patient consents. In cases of urgent necessity the Mental Welfare Commission for Scotland must agree to the transfer taking place urgently.

Note that there is no provision in the 2003 Act to waive these periods

28. The warrant for transfer will remain valid for 14 days from the effective date

Right of appeal

29. A patient may appeal to the Tribunal against his/her proposed transfer at any time between being notified by the Scottish Ministers and the transfer taking place. The Tribunal may make or refuse to make an order that the proposed transfer go ahead.

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30. Thereafter an appeal against the decision made by the Tribunal may be made to the sheriff principal in those cases where the patient is subject to a SDC, an ICTO, a CTO or a compulsion order without a restriction order. The “relevant” persons who may appeal against a decision of the Tribunal to either make or refuse to make an order providing for the patient’s transfer, and subsequently against a decision of the sheriff principal allowing or refusing the appeal, are:
- the person to whom the decision relates
 - the MHO
 - the person’s RMO, and
 - the Scottish Ministers
31. Where the patient is subject to a CORO, an HD, or a TTD an appeal against a decision made by the Tribunal must be made direct to the Court of Session. The “relevant” persons who may appeal are:
- the person to whom the decision relates
 - the Scottish Ministers
 - the patient’s MHO, and
 - the patient’s RMO
32. It will be noted that there may be persons who have been notified of the proposed transfer, yet who do not have the right of appeal against the Scottish Ministers’ decision, for example, the person’s named person or primary carer. Where it appears to the Commission that it is appropriate to do so, the regulations also provide that the Commission may independently make reference to the Tribunal in respect of the proposed transfer. Where the Commission makes reference to the Tribunal, the Commission shall give notice of such reference and provide the reason for making the reference to:
- the patient
 - the patient’s named person; or
 - where the patient is an informal patient to be transferred outwith the United Kingdom, the patient’s primary carer
 - any guardian of the patient
 - any welfare attorney of the patient
 - the MHO
 - the RMO
 - the Scottish Ministers
33. Pending determination of an appeal any warrant issued shall be suspended and the transfer shall not take place.
34. Where on appeal, the Tribunal or the sheriff principal refuses to order that the proposed transfer shall not take place, the patient can not be transferred within 21 days of that decision, except where the patient consents to the transfer in writing.

35. There is no right of appeal, or of reference by the Commission, after a transfer has taken place, provided that the transfer was carried out in accordance with the provisions of the Act and associated regulations.

Absconding patients

36. Where patients are being transferred under a cross border transfer and they abscond, then the provisions relating to absconding apply. These are where the patient:

- is being conveyed or is travelling in the country or territory to which they are being transferred and have not yet reached their destination;
- absconds before he/she has become subject to the relevant measures in the country or territory to which they have been transferred; and
- returns to Scotland

37. A patient who is subject to civil detention procedures and who absconds is liable to be taken into custody and dealt with in accordance with sections 301 to 303 of the Act.

38. A patient who is subject to a compulsion order (with or without a restriction order), an HD or a TTD is liable to be taken into custody in accordance with regulations made under s310 (**The Mental Health (Absconding by mentally disordered offenders) (Scotland) Regulations 2005**) and dealt with in accordance with those regulations .

39. In general terms both sets of provisions provide that once the patient is taken into custody he/she may be:

- returned to the hospital where he/she was originally detained;
- taken to the hospital in which he/she was to be detained, or if that is not appropriate or practicable, any other place considered appropriate by the patient's responsible medical officer;
- returned or taken to such other place as the patient absconded from, or at which the patient failed to reside
- or, if that is not appropriate or practicable,
- to take the patient to any other place considered appropriate by the patient's RMO.

(further information in relation to absconding by patients are contained in volume 2, chapter 8, and volume 3, part 1, chapter 6 of the code of practice)

Powers of escorts from other territories

40. The following persons have the same powers to take or retake a patient who absconds or attempts to abscond during the transfer as those persons authorised to escort patients under the 2003 Act:

- persons who are authorised to escort patients under the law of the country or territory to which the patient is being transferred; and
- persons authorised to escort the patient from Scotland under directions given by the Scottish Ministers.

Hospital Managers duty of notification – post transfer

41. Within 7 days beginning with the date of the transfer, the managers of the hospital from which the patient is transferred, or the hospital responsible for the patient, must give notice to both the patient's MHO and the Commission of the following:

- the date of the transfer; and
- the name and address of the hospital to which the patient was transferred; or
- where the patient has been conditionally discharged under section 193(7) of the 2003 Act and has not been recalled under section 202 of that Act, the address of the place where the patient, after the transfer, is to reside.

42. Where the patient was subject to one of the following orders, the hospital manager must also provide similar notice to the Scottish Ministers within 7 days:

- a short term detention certificate (SDC);
- an interim compulsory treatment order (ICTO);
- a compulsory treatment order (CTO); or
- a compulsion order without a restriction order (CO).

Cessation of measures

43. Where a patient whose detention in hospital is authorised by the 2003 Act or the relevant 1995 Act provisions, is transferred from Scotland, the measures which authorised the patient's detention in hospital in Scotland shall cease to have effect when the patient becomes subject to relevant measures in the country or territory to which the patient is transferred.

Treatment of prison sentence with respect to certain patients

44. Where a patient whose detention in hospital is authorised by an HD or a TTD is transferred from Scotland under these regulations his/her sentence is treated in the relevant territory as if it had been imposed in that territory.

TRANSFER OF PATIENTS FROM OTHER UNITED KINGDOM TERRITORIES INTO SCOTLAND

45. The 2003 Act and associated regulations also make provision for the reception of patients into Scotland from within the United Kingdom. The provisions only apply to those patients who are subject to formal measures corresponding or similar to those in the Act or the 1995 Act. These transfers require the consent of Scottish Ministers who will consider requests made by the person or authority exercising corresponding functions in a relevant territory. The information required by Scottish Ministers is:
- the patient's name and address;
 - the name and address of the patient's nearest relative or primary carer (if any);
 - the type (or types) of mental disorder the patient has, by reference to the definition of "mental disorder" under section 328 of the 2003 Act;
 - details of the relevant measures to which the patient is currently subject;
 - the name and address of the hospital in the relevant territory in which the patient is presently detained or is liable to be detained (the "sending hospital");
 - the name and address of the hospital in Scotland in which it is proposed the patient will be detained or liable to be detained (the "receiving hospital");
 - where the patient was subject to a measure corresponding or similar to a restriction order and has been conditionally discharged under the most closely corresponding enactment in force in the relevant territory, the address of the place where the patient is to reside;
 - the date on which it is proposed that the transfer will take place;
 - confirmation that arrangements have been made for admitting the patient to the receiving hospital; and
 - the name and other appropriate contact details of the AMP who is anticipated will become the patient's RMO.
46. Where the Scottish Ministers have consented to the reception of a patient into Scotland, they will give notice to the managers of both the sending hospital and the receiving hospital that the transfer may proceed (subject to any other approvals necessary in the sending jurisdiction).
47. Scottish Ministers can consider any directions as to the patient's conveyance to their destination in Scotland which have been made by the sending person or authority. The Scottish Ministers may give further directions as they think fit and/or arrange for the patient's RMO or the managers of the receiving hospital to give such directions.

Duty of hospital managers

48. As soon as is reasonably practicable after receiving notice from both the Scottish Ministers and the managers of the sending hospital that the transfer is to go ahead, the managers of the receiving hospital must appoint an RMO.
49. The managers must also give notice to the relevant local authority to enable an MHO to be designated having responsibility for the patient's case. The notice must include:
- the name of the patient;
 - the name and address of the receiving hospital;
 - the measure under the 2003 Act or the 1995 Act to which the patient will be treated on reception into Scotland; and
 - the date on which the patient is expected to be received in Scotland.

Local authority - Designation of an MHO

50. As soon as reasonably practicable after being notified by the managers of the receiving hospital that the transfer is to go ahead, the relevant local authority must designate an MHO to be responsible for the patient's case. The relevant local authority is:
- where the patient is not to be detained in hospital, the local authority for the area in which the patient resides;
 - where the patient is to be detained in hospital, the local authority for the area in which the hospital is situated.

(further information on the designation of MHOs is contained in volume 1, chapter 9 of the code of practice)

Powers of escorts and absconding

51. From the time when the patient enters Scotland, by virtue of a direction given by the Scottish Ministers, until reaching his/her destination, the persons escorting the patient have the following powers:
- persons authorised in the relevant territory under the law of that territory to escort patients have the same powers as they had in the relevant territory;
 - escorts authorised under or by virtue of the 2003 Act to escort a patient to their destination in Scotland have the same powers as they would have if the patient was subject to the measure under the 2003 Act or the 1995 Act;
 - where the patient absconds from the custody of such escorts, to immediately pursue and resume the custody of the patient; and

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- to restrain the patient if the patient has absconded, or attempted to abscond while being so escorted; and
 - to use reasonable force where the patient absconds or has attempted to abscond.
52. The following persons may also take a patient who absconds within Scotland while being escorted to their destination in Scotland into custody or to a place of safety:
- a mental health officer;
 - a constable;
 - a member of staff of any hospital: and
 - any other person authorised to do so by the patient's RMO.

(further information in relation to absconding by patients are contained in volume 2, chapter 8, and volume 3, part 1, chapter 6 of the code of practice)

Reception into Scotland - general

53. Where a patient is transferred into Scotland, the written authority for his/her transfer should either precede or accompany the patient. On reception into Scotland, the patient is treated as if they are subject to the measure under the 2003 Act or 1995 Act which most closely corresponds or is most similar to those which the patient was subject immediately before the transfer. This also applies where the patient had immediately prior to the transfer been subject to a restriction order and had been conditionally discharged in the relevant territory. Where the patient is treated on reception into Scotland as if he/she is subject to a hospital direction or a transfer for treatment direction, his/her sentence is treated as if it had been imposed by a court in Scotland.

Patients subject to measure corresponding to a CTO, ICTO or CO

54. The detention in hospital and giving of treatment in accordance with Part 16 of the 2003 Act apply to those patients being treated as if they were subject to a CTO, an ICTO, a CO, a CORO, an HD or a TTD.

Duties of the MHO

55. As soon as practicable after being designated as the mental health officer having responsibility for the patient's case, the MHO shall:
- take such steps as are reasonably practicable to establish whether the patient has a named person;

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- notify the patient's responsible medical officer of the name and address of any named person;
- prepare a social circumstances report within 21 days of the patient being received in Scotland and send a copy of the report to the patient's RMO and the Commission, or
- where the MHO considers that a social circumstances report would serve little or no practical purpose, record the reasons for their decision and send a statement of those reasons to the patient's RMO and the Commission within 21 days;
(further information on the preparation of social circumstances reports is contained in volume 1, chapter 11 of the Code of Practice)
- to inform the patient of the availability of independent advocacy services under section 259 of the 2003 Act; and take appropriate steps to ensure that the patient has the opportunity of making use of those services.
(further information on independent advocacy is contained in volume 1, chapter 6 of the Code of Practice)
- be prepared to provide his/her views to the RMO in respect of his assessment of the patient and the RMO's preparation of the care plan

Duties of the RMO – assessment of patient

General

56. The RMO must carry out an assessment of the patient within 7 days of the patient's reception in Scotland. The RMO must:
- carry out a medical examination of the patient; or
 - make arrangements for an AMP to carry out such an examination;
 - to consult and have regard to the views of the patient's designated MHO; and
 - to consider –
 - a. whether the conditions relevant to the measure to which the patient has become treated apply in respect of the patient; and
 - b. whether, it continues to be necessary for the patient to be subject to the measures authorised by the 2003 Act or the 1995 Act for which the patient became treated in respect of a CO, a CORO, an HD, or a TTD

CO; CORO; HD; TTD. –

57. For the above orders, the conditions referred are that:
- the patient has a mental disorder;
 - that medical treatment which would be likely to –
 - a. prevent the mental disorder worsening; or
 - b. alleviate any of the symptoms, or effects, of the disorder
 - c. is available for the patient; and
 - that if the patient were not provided with such medical treatment there would be a significant risk –

- d. to the health, safety or welfare of the patient; or
- e. to the safety of any other person

CORO; HD; TTD

58. In addition to the above conditions set out at paragraph 55, the RMO must also consider whether, as a result of the patient's mental disorder, it is necessary for the patient to be detained in hospital, whether or not for medical treatment, in order to protect any other person from serious harm.

EDC; SDC

59. Where a patient has become treated as if they are subject to the above orders, the conditions are:

- that the patient has a mental disorder;
- that because of the mental disorder, the patient's ability to make decisions about the provision of medical treatment is significantly impaired; and
- that if the patient were not detained in hospital there would be a significant risk –
 - a. to the health, safety or welfare of the patient; or
 - b. to the safety of any other person

ICTO; CTO

60. The conditions which must be satisfied for these orders are;

- that the patient has a mental disorder;
- that medical treatment which would be likely to –
 - a. prevent the mental disorder worsening; or
 - b. alleviate any of the symptoms, or effects, of the disorder
 - c. is available for the patient;
- that if the patient were not provided with such medical treatment there would be a significant risk –
 - d. to the health, safety or welfare of the patient; or
 - e. to the safety of any other person
- that because of the mental disorder, the patient's ability to make decisions about the provision of medical treatment is significantly impaired.

Duties of RMO – revocation of orders

61. This provision applies to the following orders:

- an EDC
- an SDC
- an ICTO

- a CTO
- a CO

62. Following this assessment, where the RMO considers that the conditions do not continue to be met or that it is necessary for the detention in hospital of the patient to be authorised by the certificate, then the RMO must make a determination revoking the certificate or order.

Duties of RMO – report and recommendation following assessment to Scottish Ministers - CORO; HD; TTD

63. As soon as practicable after carrying out the assessment, the RMO must provide a report and make recommendations to the Scottish Ministers in respect of patients who are being treated under the above measures.

64. The report shall record:

- whether the appropriate conditions continue to apply in respect of the patient
- 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; and
- whether it continues to be necessary for the patient to be subject to the compulsion order and the restriction order or as the case may be, the direction.

Patient subject to a CORO

65. If, after having regard to views expressed by the MHO, the RMO is satisfied that:

- the patient has a mental disorder;
but is not satisfied that:
- 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; and
- that the conditions mentioned in paragraphs (b) and (c) of the section 182(4) of the 2003 Act continue to apply in respect of the patient,

the RMO must include in his/her report to the Scottish Ministers a recommendation that the compulsion order be revoked.

66. If, after having regard to any views expressed by the MHO, the RMO is satisfied that:

- that the conditions mentioned in section 182(2) of the 2003 Act continue to apply in respect of the patient; and
- that it continues to be necessary for the patient to be subject to the compulsion order;

but is not satisfied that:

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- as a result of the patient's mental disorder it continues to be necessary for the patient to be detained in hospital, whether or not for medical treatment, in order to protect any other person from serious harm; and
- that it is no longer necessary for the patient to be subject to the restriction order

then the RMO must include in his/her report to Scottish Ministers a recommendation that the restriction order be revoked. Where the RMO is satisfied that the compulsion order should also be varied by modifying the measures specified in it, he/she must also include a recommendation in the report specifying how the compulsion order should be varied.

67. If, after having regard to any views expressed by the MHO, the RMO is satisfied that:

- the conditions mentioned in section 182(2) of the 2003 Act continue to apply in respect of the patient; and
- that it continues to be necessary for the patient to be subject to the compulsion order; but

is not satisfied that, as a result of the patient's mental disorder, it is necessary for the patient to be detained in hospital, whether or not for medical treatment, in order to protect any other person from serious harm, the RMO must include in his/her report to the Scottish Ministers a recommendation that the patient be conditionally discharged.

HD; TTD

68. If, after having regard to any views expressed by persons consulted under section 206(3)(c) of the 2003 Act (these being the MHO and such other persons as the RMO considers appropriate), the RMO is satisfied that:

- the patient has a mental disorder; but
 - is not satisfied that:
 - 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; and
 - that the conditions mentioned in paragraphs (b) and (c) of the section 182(4) of the 2003 Act continue to apply in respect of the patient,
- the RMO must include in his/her report to the Scottish Ministers a recommendation that the direction be revoked.

Duties of RMO – notification requirement post assessment

69. As soon as practicable, but in any event within 14 days of the date on which the patient was received in Scotland, the RMO must prepare and send to the managers of the receiving hospital a report stating;

- whether the relevant conditions apply in respect of the patient;
- the type (or types) of mental disorder that the patient has (by reference to section 328 of the 2003 Act);
- whether it is necessary for the patient to be subject to the measures authorised to which the patient became treated.

Duties of the hospital managers – post assessment

70. The managers of the receiving hospital must notify the following parties of the matters listed at paragraph 70 following the assessment by the RMO. This notification must be given as soon as practicable but nevertheless within 14 days of the patient being received in Scotland to:

- the patient;
- the patient's named person;
- the Commission;
- the designated MHO
- where the patient became treated as if they were subject to a compulsory treatment order (CTO) or a compulsion order (CO), the Tribunal;
- where the patient became treated as if they were subject to one of the following orders, notification must also be given to the Scottish Ministers –
 - a. a compulsion order and a restriction order (CORO);
 - b. a hospital direction (HD); or
 - c. a transfer for treatment direction (TTD)

71. The matters to be notified by the hospital managers are:

- the name and address of the sending hospital;
- the name and address of the receiving hospital;
- the date on which the transfer took place;
- the name and other appropriate contact details of the patient's RMO;
- whether following the RMO's assessment the RMO is satisfied that the relevant conditions apply in respect of the patient;
- whether it is necessary for the patient to be subject to the measures authorised by the 2003 Act or the 1995 Act;
- the date on which the authority to detain under the 2003 Act or the 1995 Act will cease unless otherwise extended; or
- the date on which the authority to detain under the 2003 Act or the 1995 Act ceased (whether by revocation or otherwise);
- where the patient is subject to a CTO or a CO, the period during which the next mandatory review of the order is to take place.

Duties of RMO - Care Plans – CTO or CO

72. Care plans in terms of sections 76 or 137 of the 2003 Act must be prepared for those patients who are being treated as if subject to a CTO or a CO respectively. The RMO must prepare the care plan relating to the patient as soon as practicable but in any event within 28 days of the patient being received into Scotland. (**The Mental Health (Content and amendment of care plans)(Scotland) Regulations 2005 (SSI No. 309)** provide for additional information to be provided by the RMO than that listed in the 2003 Act)

(Further information on the preparation of care plans is provided in volume 2, chapter 4 of the code of practice)

Duties of hospital managers – information to patients

73. Hospital managers must ensure that the patient is provided with relevant information, in a form appropriate to the patient's needs, and in a format from which the patient may refresh their memory. This must be provided to the patient as soon as possible after they are received in Scotland.

(For further information relating to the provision of information to patients, see volume 1, chapter 4. of the code of practice)

Future treatment of patient

74. The provisions of the 2003 Act and the 1995 Act apply to patients received in Scotland as they apply to patients whose treatment commenced in Scotland. Where the assessment of the patient takes place during one of the undernoted periods, then the review need not take place:

- section 77(2) (first mandatory review);
- section 78(2) (further mandatory reviews);
- section 139(2) (first review of compulsion order);
- section 140(2) (further reviews of compulsion order);
- section 182(2) (review of compulsion order and restrictions order); and
- section 206(2) (review of hospital direction and transfer for treatment direction).

Duty of Commission

75. Within 6 months of the patient being received in Scotland, the Commission must ensure that the patient is visited by a person authorised to do so under section 14 of the Act. The Commission may require that the interview is conducted in private. On request, the authorised person shall produce an authenticated document as proof that they have the requisite authority to do so.

INTERPRETATION OF TIMESCALES

76. The 2003 Act uses a number of ways of counting the time period. In all cases, the relevant section of the 2003 Act is specific about how these time periods should be counted.
77. Where the 2003 Act specifies a number of days beginning at a certain point these are counted from the beginning of the 1st day of the period.
78. At some sections the 2003 Act specifically says ‘working’ days. Section 47(8) of the Act defines a ‘working day’ as a day which is not:
- a Saturday
 - a Sunday
 - a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in Scotland.
79. At all other places where the 2003 Act mentions days these are calendar days.

Forms

80. Although there is no requirement to use the non-statutory forms, you are strongly recommended to do so as these draw attention to some procedural requirements under the 2003 Act. Failure to observe procedural requirements may invalidate the application. Two forms are available:
- Form TX1** – Record of notification made prior to the transfer of a patient under section 290 of the 2003 Act
- Form TX4** – Record of appeal against a cross-border transfer under section 290 of the 2003 Act.
81. From September 2005, all forms will be available on the Scottish Executive website at: www.scotland.gov.uk/health/mentalhealthlaw

Scottish Ministers - contact details

Request for transfer of non-restricted patient

82. A request for the transfer from Scotland of a non-restricted patient must be made to the Mental Health Division of the Scottish Executive Health Department. This can be done by telephoning 0131 244 2591/1800. You will be issued with a short pro forma to complete
83. You should complete the pro forma and return it, by fax in the first instance, on 0131 244 5076. The signed original copy should then be sent to:

Mental Health Legislation Team
Mental Health Division
Scottish Executive Health Department
Room 3 ER
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

Request for transfer of restricted patient

84. Any enquiries about the transfer of restricted patients should be directed to:

Mrs Rosie Toal
Mental Health Division
Scottish Executive Health Department
Room 2N.08
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

Telephone: 0131 244 2510



TRANSFER OF NON-RESTRICTED PATIENTS - PRO FORMA

Name of patient:

Date of birth:

Details of ward/hospital where the patient is currently detained. If the patient is not detained in hospital, then please provide the patient's present residence:

(Please include contact telephone number)

Details of the 2003 Act and section under which the patient is currently detained and the date of expiry of that section:

Current diagnosis:

Reason for application:

How shall the patient benefit from the transfer?

(Please explain why you believe the transfer to be in the patient's best interests)

Arrangements for the treatment, care or services available for the patient where the patient is to transfer.

(If the transfer is outwith the United Kingdom, the treatment for mental disorder corresponding or similar to that which the patient is currently receiving in hospital)

Whether the MHO agrees, or disagrees with the application. If the MHO disagreed, the reasons for that disagreement:

continue on a separate sheet if necessary.



TRANSFER OF NON-RESTRICTED PATIENTS - PRO FORMA

Date the RMO gave notice to:

- The patient;
- The patient's named person;
- The patient's primary carer (where the patient is an informal patient);
- Any guardian of the patient;
- Any welfare attorney of the patient; and
- The MHO

AND

Whether any of the above have made any representation on the proposed removal. If so, please provide details

Name and address of the patient's named person, or, if transfer is outwith the United Kingdom, the patient's primary carer:

(Please provide contact telephone number, where possible)

Is there any possible risk to the safety of any person?

Name and contact telephone number of the receiving RMO:

Details of ward/hospital where the patient is to be transferred:

(Please include contact telephone number. It would also be helpful to enclose a copy of a letter from the receiving RMO agreeing to the transfer)

Proposed date of transfer:

Signature: _____

Details of the patient's RMO, making application for the transfer:

Print name: _____

Date: _____

Contact telephone number: _____



Please complete and return to:

**Callum Heddle
Mental Health Law Team
Area 3ER
St. Andrew's House
Regent Road
EDINBURGH
EH1 3DG**

Tel: 0131 244 2591/1800

You can return the pro-forma by fax on **0131 244 5076**. Further information can be obtained from:

Callum.heddle@scotland.gsi.gov.uk or lynn.mm.anderson@scotland.gsi.gov.uk

Please note that faxed versions can only be accepted if a signed hard copy is also submitted.