



# Mental Health (Care and Treatment) (Scotland) Act 2003

## 2003 asp 13

### PART 12 **S**

#### PARTS 10 AND 11: TRANSFERS

#### 218 Transfer of patients between hospitals **S**

- (1) This section applies where a patient is subject to—
  - (a) a compulsion order and a restriction order;
  - (b) a hospital direction; or
  - (c) a transfer for treatment direction.
- (2) The managers of the hospital in which the patient is detained may, where the conditions mentioned in subsection (3) below are satisfied, transfer the patient to another hospital.
- (3) Those conditions are—
  - (a) that the managers of the hospital to which it is proposed to transfer the patient; and
  - (b) the Scottish Ministers,consent to the transfer.
- (4) Where the managers of a hospital propose to transfer a patient under subsection (2) above, they shall, subject to subsections (5) and (7) below, give the persons mentioned in subsection (8) below at least 7 days' notice of the transfer.
- (5) The managers of a hospital need not give notice under subsection (4) above where it is necessary that the patient be transferred urgently.
- (6) Where, by virtue of subsection (5) above, no notice is given under subsection (4) above, the managers of the hospital shall, subject to subsection (7) below, give the persons mentioned in subsection (8) below notice—
  - (a) where the proposed transfer has not taken place, of the proposed transfer; or
  - (b) where the transfer has taken place, of the transfer,as soon as practicable before, on or, as the case may be, after the transfer.

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- (7) The managers of the hospital need not give notice under subsection (4) or (6) above to the patient where the patient consents to the transfer.
- (8) The persons referred to in subsections (4) and (6) above and (10)(b) below are—
- (a) the patient; and
  - (b) the patient’s named person.
- (9) Where—
- (a) notice is given under subsection (4) or (6)(a) above of a proposed transfer under subsection (2) above; and
  - (b) the proposed transfer does not take place before the end of the period of 3 months beginning with the day on which notice is given,
- the managers of the hospital may transfer the patient as proposed only if subsection (10) below applies.
- (10) This subsection applies where—
- (a) the conditions mentioned in subsection (3) above continue to be satisfied; and
  - (b) the persons mentioned in subsection (8) above are given at least 7 days’ notice of the proposed transfer.
- (11) Subsections (5) to (7) above shall apply to the giving of notice under subsection (10) (b) above as they apply to the giving of notice under subsection (4) above.
- (12) Where the patient is transferred under subsection (2) above, the managers of the hospital from which the patient is transferred shall, before the expiry of the period of 7 days beginning with the transfer, give notice to the Commission of the matters mentioned in subsection (13) below.
- (13) Those matters are—
- (a) the date on which the patient was transferred;
  - (b) the hospital to which the patient was transferred;
  - (c) that—
    - (i) notice was given under subsection (4) above; or
    - (ii) if no such notice was given, the reasons why it was necessary that the patient be transferred urgently; and
  - (d) whether notice was given under subsection (6) or (10)(b) above.
- (14) Where a patient is transferred under subsection (2) above, the compulsion order, hospital direction or, as the case may be, transfer for treatment direction to which the patient is subject shall, for the purposes of this Act (other than sections 219 and 220), be taken to specify the hospital to which the patient is transferred.

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**Commencement Information**

**II** S. 218 in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

**[<sup>F1</sup>218A Transfer of patient from specified hospital unit S**

- (1) Subsection (2) below applies where—
- (a) a patient is subject to—

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- (i) a compulsion order and a restriction order,
    - (ii) a hospital direction, or
    - (iii) a transfer for treatment direction, and
  - (b) that order or (as the case may be) direction specifies the hospital unit in which the patient is to be detained.
- (2) If the condition in subsection (3) below is satisfied, the managers of the hospital in which the patient is detained may transfer the patient to another hospital unit within the same hospital.
- (3) The condition is that the Scottish Ministers consent to the transfer.
- (4) In relation to a transfer or proposed transfer under subsection (2) above, section 218(4) to (14) of this Act applies subject to the following modifications—
- (a) a reference to section 218(2) is to be read as a reference to subsection (2) above,
  - (b) in subsection (10)(a), a reference to section 218(3) is to be read as a reference to subsection (3) above,
  - (c) in subsection (12), a reference to the hospital from which the patient is transferred is to be read as a reference to the hospital in which the patient is detained,
  - (d) in subsections (13)(b) and (14), a reference to the hospital to which the patient is transferred is to be read as a reference to the hospital unit to which the patient is transferred.
- (5) For the purposes of this section, “hospital unit” means any part of a hospital which is treated as a separate unit.]

#### Textual Amendments

**F1** S. 218A inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. **48(2)**, 61(2); S.S.I. 2017/197, art. 2, sch.

## 219 Appeal to Tribunal against transfer under section 218 to hospital other than state hospital **S**

- (1) This section applies where—
- (a) a patient—
    - (i) receives notice under subsection (4), (6)(a) or (10)(b) of section 218 of this Act that it is proposed to transfer the patient; or
    - (ii) is transferred under subsection (2) of that section, to any hospital other than a state hospital; and
  - (b) the hospital to which the patient is, or is proposed to be, transferred is not specified in the compulsion order, hospital direction or, as the case may be, transfer for treatment direction to which the patient is subject.
- (2) The patient, or the patient’s named person, may, during the period mentioned in subsection (3) below, appeal to the Tribunal against the proposed transfer or, as the case may be, the transfer.
- (3) That period is—

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- (a) in the case of the patient—
    - (i) where notice is given to the patient before the proposed transfer, the period beginning with the day on which notice is given and ending 28 days after the transfer;
    - (ii) where notice is given to the patient on or after the transfer, the period beginning with the day on which the patient is transferred and ending 28 days after the day on which notice is given; or
    - (iii) where notice is not given to the patient, the period of 28 days beginning with the day on which the patient is transferred;
  - (b) in the case of the patient’s named person—
    - (i) where notice is given to the patient’s named person before the proposed transfer, the period beginning with the day on which notice is given and ending 28 days after the transfer; or
    - (ii) where notice is given to the patient’s named person on or after the transfer, the period of 28 days beginning with the day on which notice is given.
- (4) If, when an appeal under subsection (2) above against a proposed transfer is made to the Tribunal, the proposed transfer has not taken place—
- (a) the managers of the hospital shall not transfer the patient as proposed; but
  - (b) the Tribunal may, if satisfied that, pending the determination of the appeal, the patient should be transferred as proposed, make an order that the patient be so transferred.
- (5) On an appeal under subsection (2) above, the Tribunal may make an order that the proposed transfer not take place or, as the case may be, that the patient be returned to the hospital from which the patient was transferred.

#### Commencement Information

**I2** S. 219 in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

## 220 Appeal to Tribunal against transfer under section 218 to state hospital **S**

- (1) This section applies where—
- (a) a patient—
    - (i) receives notice under subsection (4), (6)(a) or (10)(b) of section 218 of this Act that it is proposed to transfer the patient; or
    - (ii) is transferred under subsection (2) of that section, to a state hospital; and
  - (b) the state hospital to which the patient is, or is proposed to be, transferred is not specified in the compulsion order, hospital direction or, as the case may be, transfer for treatment direction to which the patient is subject.
- (2) The patient, or the patient’s named person, may, during the period mentioned in subsection (3) below, appeal to the Tribunal against the proposed transfer or, as the case may be, the transfer.
- (3) That period is—
- (a) in the case of the patient—

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- (i) where notice is given to the patient before the proposed transfer, the period beginning with the day on which notice is given and ending 12 weeks after the transfer;
    - (ii) where notice is given to the patient on or after the transfer, the period beginning with the day on which the patient is transferred and ending 12 weeks after the day on which notice is given; or
    - (iii) where notice is not given to the patient, the period of 12 weeks beginning with the day on which the patient is transferred;
  - (b) in the case of the patient's named person—
    - (i) where notice is given to the patient's named person before the proposed transfer, the period beginning with the day on which notice is given and ending 12 weeks after the transfer; or
    - (ii) where notice is given to the patient's named person on or after the transfer, the period of 12 weeks beginning with the day on which notice is given.
- (4) If, when an appeal under subsection (2) above against a proposed transfer is made to the Tribunal, the proposed transfer has not taken place—
- (a) the managers of the hospital shall not transfer the patient as proposed; but
  - (b) the Tribunal may, if satisfied that, pending determination of the appeal, the patient should be transferred as proposed, make an order that the patient be so transferred.
- (5) On an appeal under subsection (2) above, the Tribunal may, if not satisfied as to the matter mentioned in subsection (6) below, make an order that the proposed transfer not take place or, as the case may be, that the patient be returned to the hospital from which the patient was transferred.
- (6) That matter is—
- (a) that the patient requires to be detained in hospital under conditions of special security; and
  - (b) that those conditions of special security can be provided only in a state hospital.

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**Commencement Information**

- I3** S. 220 in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)