



Mental Health (Scotland) Act 1984

1984 CHAPTER 36

PART VII

REMOVAL AND RETURN OF PATIENTS WITHIN UNITED KINGDOM ETC.

Removal to and from England and Wales

77 Removal of patients to England and Wales.

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

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

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

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

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

Textual Amendments

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

Marginal Citations

M1 1983 c. 20.

[^{F2}77A Transfer of responsibility for patients to England and Wales.

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

Textual Amendments

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

Marginal Citations

M2 1995 c.46.

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

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

79 Position of nearest relative on removal to Scotland.

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

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

Marginal Citations

- M3** 1984 c. 28.
M4 1959 c. 72.
M5 1983 c. 20.

Removal to and from Northern Ireland

80 Removal of patients to Northern Ireland.

- (1) If it appears to the Secretary of State, in the case of a patient who is for the time being liable to be detained or subject to guardianship under this Act, that it is in the interests of the patient to remove him to Northern Ireland, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, the Secretary of State may authorise his removal to Northern Ireland and may give any necessary directions for his conveyance to his destination.
- (2) Subject to the provisions of subsection (4) of this section, where a patient who is liable to be detained under this Act by virtue of an application, order or direction under any enactment in force in Scotland is removed under this section and admitted to a hospital in Northern Ireland, he shall be treated as if on the date of his admission he had been so admitted in pursuance of an application made, or an order or direction made or given, on that date under the corresponding enactment in force in Northern Ireland, and, where he is subject to an order or direction under any enactment in this Act restricting his discharge, as if he were subject to ^{F3}a restriction order or a restriction direction] under the corresponding enactment in force in Northern Ireland.
- (3) Where a patient who is subject to guardianship under this Act by virtue of an application or order under any enactment in force in Scotland is removed under this section and received into guardianship in Northern Ireland, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application or order under the corresponding enactment in force in Northern Ireland, and as if the application had been accepted or, as the case may be, the order had been made on that date.
- (4) Where a person removed under this section was immediately before his removal liable to be detained by virtue of an application for admission under this Act, he shall, on his admission to a hospital in Northern Ireland, be treated as if ^{F4}he were detained for treatment under Part II of the Mental Health (Northern Ireland) Order 1986 by virtue of a report under Article 12(1) of that Order made on the date of his admission].
- (5) Where a patient removed under this section was immediately before his removal liable to be detained under this Act by virtue of a transfer direction given while he was serving a sentence of imprisonment (within the meaning of section 71(7) of this Act) imposed by a court in Scotland, he shall be treated as if the sentence had been imposed by a court in Northern Ireland.
- (6) Where a person removed under this section was immediately before his removal subject to a restriction order or a restriction direction, being an order or direction of limited duration, ^{F5}the restriction order or restriction direction] to which he is subject

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by virtue of subsection (2) of this section shall expire on the date on which the first-mentioned order or direction would have expired if he had not been so removed.

[^{F6}(6A) Where a patient removed under this section was immediately before his removal liable to be detained under this Act by virtue of a hospital direction made by a court in Scotland, he shall be treated as if any sentence of imprisonment passed at the time at which the hospital direction was made had been imposed by a court in Northern Ireland.]

(7) In this section “hospital” has the same meaning as in the Mental Health [^{F7}(Northern Ireland) Order 1986].

Textual Amendments

- F3** Words substituted by S.I. 1986/596, [art. 3\(2\)](#)
F4 Words substituted by S.I. 1986/596, [art. 3\(3\)](#)
F5 Words substituted by S.I. 1986/596, [art. 3\(4\)](#)
F6 S. 80(6A) inserted (1.1.1998) by 1997 c. 48, s. 62(1), [Sch. 1](#), para. 9(9) (with s. 33(6)); S.I. 1997/2323, [art. 4](#), [Sch. 2](#)
F7 Words substituted by S.I. 1986/596, [art. 3\(5\)](#)

[^{F8}80A Transfer of responsibility for patients to Northern Ireland.

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

Textual Amendments

- F8** S. 80A inserted (1.10.1997) by 1997 c. 43, s. 48, [Sch. 3 Pt. II para. 7](#); S.I. 1997/2200, [art. 2](#)

81 Removal to Scotland of patients from Northern Ireland.

- (1) If it appears to the responsible authority, in the case of a patient who is for the time being liable to be detained or subject to guardianship under the Mental Health [^{F9}(Northern Ireland) Order 1986 (otherwise than by virtue of Article 42, 43 or 45 of that Order)], that it is in the interests of the patient to remove him to Scotland, and that arrangements have been made for admitting him to a hospital or, as the case may be, for receiving him into guardianship there, the responsible authority may authorise

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his removal to Scotland and may give any necessary directions for his conveyance to his destination.

- (2) Subject to the provisions of [F10subsections (4) and (4A)] of this section, where a patient who is liable to be detained under [F10the Mental Health (Northern Ireland) Order 1986] by virtue of an application, order or direction under any enactment in force in Northern Ireland is removed under this section and admitted to a hospital in Scotland, he shall be treated as if on the date of his admission he had been so admitted in pursuance of an application forwarded to the managers of the hospital, or an order or direction made or given, on that date under the corresponding enactment in force in Scotland and, where he is subject to [F10a restriction order or restriction direction under that Order], as if he were subject to a restriction order or a restriction direction under the corresponding enactment in force in Scotland.
- (3) Where a patient who is subject to guardianship under [F11the Mental Health (Northern Ireland) Order 1986] by virtue of an application or order under any enactment in force in Northern Ireland is removed under this section and received into guardianship in Scotland, he shall be treated as if on the date on which he arrives at the place where he is to reside he had been so received in pursuance of an application or order under the corresponding enactment in force in Scotland and as if the application had been forwarded or, as the case may be, the order had been made on that date.
- [F12(4) Where a person removed under this section was immediately before his removal liable to be detained for treatment by virtue of a report under Article 12(1) or 13 of the Mental Health (Northern Ireland) Order 1986, he shall be treated on his admission to a hospital in Scotland as if he had been admitted thereto in pursuance of an application for admission forwarded to the managers of that hospital on the date of his admission.
- (4A) Where a person removed under this section was immediately before his removal liable to be detained by virtue of an application for assessment under Article 4 of the Mental Health (Northern Ireland) Order 1986, he shall be treated on his admission to a hospital in Scotland, as if he had been admitted thereto in pursuance of an emergency recommendation made on the date of his admission.]
- (5) Where a patient removed under this section was immediately before his removal liable to be detained under the Mental Health [F13(Northern Ireland) Order 1986], by virtue of a transfer direction given while he was serving a sentence of imprisonment (within the meaning of [F13Article 53(5) of that Order]) imposed by a court in Northern Ireland, he shall be treated as if the sentence had been imposed by a court in Scotland.
- (6) Where a patient removed under this section was immediately before his removal subject to [F14a restriction order or restriction direction] of limited duration, the restriction order or restriction direction to which he is subject by virtue of subsection (2) of this section shall expire on the date on which the [F14first-mentioned restriction order or restriction direction] would have expired if he had not been so removed.
- (7) In this section “the responsible authority” means the Department of Health and Social Services for Northern Ireland or, in relation to a patient who is subject to [F15restriction order or restriction direction], the Secretary of State.

Textual Amendments

F9 Words substituted by [S.I. 1986/596, art. 3\(6\)](#)

F10 Words substituted by [S.I. 1986/596, art. 3\(7\)](#)

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- F11** Words substituted by [S.I. 1986/596, art. 3\(8\)](#)
- F12** [S. 81\(4\)\(4A\)](#) substituted by [S.I. 1986/596, art. 3\(9\)](#)
- F13** Words substituted by [S.I. 1986/596, art. 3\(10\)](#)
- F14** Words substituted by [S.I. 1986/596, art. 3\(11\)](#)
- F15** Words substituted by [S.I. 1986/596, art. 3\(12\)](#)

[^{F16}81A Transfer of responsibility for patients to Scotland from Northern Ireland.

- (1) If it appears to the relevant Minister, in the case of a patient who—
 - (a) is subject to a restriction order under Article 47(1) of the ^{M6}Mental Health (Northern Ireland) Order 1986; and
 - (b) has been conditionally discharged under Article 48(2) or 78(2) of that Order, that a transfer under this section would be in the interests of the patient, that Minister may, with the consent of the Secretary of State, transfer responsibility for the patient to the Secretary of State.
- (2) Where responsibility for such a patient is transferred under this section, the patient shall be treated—
 - (a) as if on the date of the transfer he had been conditionally discharged under section 64 or 68 of this Act; and
 - (b) as if he were subject to a restriction order within the meaning of this Act.
- (3) Where a patient responsibility for whom is transferred under this section was immediately before the transfer subject to a restriction order of limited duration, the restriction order to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order would have expired if the transfer had not been made.
- (4) In this section “the relevant Minister” means the Minister exercising in Northern Ireland functions corresponding to those of the Secretary of State.]

Textual Amendments

- F16** [S. 81A](#) inserted (1.10.1997) by [1997 c. 43, s. 48, Sch. 3, Pt. II, para. 8](#); [S.I. 1997/2200, art. 2](#)

Marginal Citations

- M6** [S.I. 1986/596 \(N.I.4\)](#).

Other provisions as to removal

82 Removal of certain patients from Channel Islands and Isle of Man to Scotland.

- (1) The Secretary of State may by warrant direct that any offender found by a court in any of the Channel Islands or in the Isle or Man to be insane or to have been insane at the time of the alleged offence, and ordered to be detained during Her Majesty’s pleasure, be removed to a hospital in Scotland.
- (2) A patient removed under this section shall, on his reception into the hospital in Scotland, be treated as if he had been removed to that hospital in pursuance of an order under [^{F17}section 57(2)(a) and (b) of the Criminal Procedure (Scotland) Act 1995].

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- (3) The Secretary of State may by warrant direct that any patient removed under this section from any of the Channel Islands or from the Isle of Man be returned to the Island from which he was so removed, there to be dealt with according to law in all respects as if he had not been removed under this section.

Textual Amendments

F17 Words in s. 82(2) substituted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 9(10)** (with s. 33(6)); S.I. 1997/1712, art. 3, **Sch**

[^{F18}82A Responsibility for patients transferred from Channel Islands or Isle of Man to Scotland.

- (1) This section applies to any patient responsibility for whom is transferred to the Secretary of State by the authority exercising corresponding functions in any of the Channel Islands or the Isle of Man under a provision corresponding to section 82B of this Act.
- (2) The patient shall be treated—
- (a) as if on the date of the transfer he had been conditionally discharged under section 64 or 68 of this Act; and
 - (b) as if he were subject to a restriction order within the meaning of this Act.
- (3) Where the patient was immediately before the transfer subject to an order restricting his discharge, being an order of limited duration, the restriction order to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order would have expired if the transfer had not been made.]

Textual Amendments

F18 S. 82A inserted (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3 Pt. II para. 9**; S.I. 1997/2200, art. 2

[^{F19}82B Transfer of responsibility for patients to Channel Islands or Isle of Man.

If it appears to the Secretary of State, in the case of a patient who—

- (a) is subject to a restriction order under section 59 of the ^{M7}Criminal Procedure (Scotland) Act 1995; and
- (b) has been conditionally discharged under section 64 or 68 of this Act,

that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the authority exercising corresponding functions in any of the Channel Islands or in the Isle of Man, transfer responsibility for the patient to that authority.]

Textual Amendments

F19 S. 82B inserted (1.10.1997) by 1997 c. 43, s. 48, **Sch. 3 Pt. II para. 10**; S.I. 1997/2200, art. 2

Marginal Citations

M7 1995 c.46.

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83 Removal of alien patients.

If it appears to the Secretary of State, in the case of any patient who is neither a British citizen nor a Commonwealth citizen having the right of abode in the United Kingdom by virtue of section 2(1)(b) of the ^{M8}Immigration Act 1971 and who is receiving treatment for mental illness [^{F20}(including personality disorder)] as an in-patient in a hospital in Scotland, that proper arrangements have been made for the removal of that patient to a country or territory outside the United Kingdom, the Isle of Man and the Channel Islands and for his care or treatment there, and that it is in the interests of the patient to remove him, the Secretary of State may by warrant authorise the removal of the patient from the place where he is receiving treatment as aforesaid, and may give such directions as the Secretary of State thinks fit for the conveyance of the patient to his destination in that country or territory and for his detention in any place or on board any ship or aircraft until his arrival at any specified port or place in any such country or territory.

Textual Amendments

F20 Words in s. 83 inserted (13.9.1999) by 1999 asp 1, s. 3(1)(b)

Marginal Citations

M8 1971 c. 77.

Return of patients absent without leave

84 Patients absent from hospitals in Scotland.

- (1) Subject to the provisions of this section, any person who, under section 28 or section 121 of this Act or under the said section 28 as applied by section 32 of this Act may be taken into custody in Scotland, may be taken into custody in, and returned to Scotland from, any other part of the United Kingdom or the Channel Islands or the Isle of Man.
- (2) For the purposes of the enactments referred to in subsection (1) of this section, in their application by virtue of this section to England and Wales, Northern Ireland, the Channel Islands or the Isle of Man, the expression “constable” includes an English constable, an officer or constable of the Royal Ulster Constabulary, a member of the police in Jersey, an officer of police within the meaning of section 43 of the Larceny (Guernsey) Law 1958, or any corresponding law for the time being in force, or a constable in the Isle of Man, as the case may be.
- (3) For the purposes of the said enactments in their application by virtue of this section to England and Wales or Northern Ireland, any reference to a mental health officer shall be construed as including a reference—
 - (a) in England and Wales, to any approved social worker within the meaning of the ^{M9}Mental Health Act 1983.
 - (b) in Northern Ireland, to any [^{F21}approved social worker within the meaning of the Mental Health (Northern Ireland) Order 1986].
- (4) This section shall not apply to any person who is subject to guardianship.

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Textual Amendments

F21 Words substituted by [S.I. 1986/596, art. 3\(13\)](#)

Marginal Citations

M9 [1983 c. 20.](#)

85 Patients absent from hospitals in Northern Ireland.

Any person (other than a person subject to guardianship) who—

- (a) under [^{F22}Article 29 or 132 of the Mental Health (Northern Ireland) Order 1986] (which provide respectively for the retaking of patients absent without leave and for the retaking of patients escaping from custody); or
- (b) under the said [^{F22}Article 29 as applied by Article 31 of the said Order] (which makes special provision as to persons sentenced to imprisonment);

may be taken into custody in Northern Ireland, may be taken into custody in, and returned to Northern Ireland from, Scotland by a mental health officer, by any constable or by any person authorised by or by virtue of the [^{F22}said Order] to take him into custody.

Textual Amendments

F22 Words substituted by [S.I. 1986/596, art. 3\(14\)](#)

Supplementary

86 Regulations for purposes of Part VII.

Section 58 of this Act shall have effect as if references therein to Part V of this Act included references to this Part of this Act and to Part VI of the ^{M10}Mental Health Act 1983, so far as the said Parts apply to patients removed to Scotland thereunder.

Marginal Citations

M10 [1983 s. 20.](#)

87 General provisions as to patients removed from Scotland.

- (1) Where a patient liable to be detained or subject to guardianship by virtue of an application, order or direction under Part V or Part VI of this Act is removed from Scotland in pursuance of arrangements under this Part of this Act, the application, order or direction shall cease to have effect when he is duly received into a hospital or other institution, or placed under guardianship, in pursuance of those arrangements.
- (2) The Secretary of State shall, where he authorises the removal from Scotland of a patient under any of the provisions of this Part of this Act, send notification of that authorisation to the Mental Welfare Commission and to the nearest relative of the patient not less than 7 days before the date of the removal of the patient.

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88 Intimation of removal of patients to Scotland.

- (1) Where a patient is admitted to a hospital in Scotland or received into guardianship there in pursuance of arrangements under this Part of this Act, or under Part VI of the Mental Health Act 1983, the responsible medical officer shall, within 28 days of such admission or reception as aforesaid, furnish to the managers of the hospital, or, as the case may be, the local authority concerned, a report in the prescribed form stating the form of mental disorder, being mental illness [^{F23}(including personality disorder)] or mental handicap or both, from which, in the opinion of the responsible medical officer, the patient is suffering; and for the purposes of this Act the reason for his admission or reception as aforesaid, and for his being liable to detention or subject to guardianship, shall be that he is suffering from the form or forms of mental disorder so stated.
- (2) Where a patient has been admitted to a hospital or received into guardianship as aforesaid, the managers of the hospital or the local authority concerned, as the case may be, shall send notification to the Mental Welfare Commission of that admission or reception together with a copy of the report relating to the patient, made in pursuance of the last foregoing subsection, within 7 days of the receipt by them of that report.

Textual Amendments

F23 Words in s. 88(1) inserted (13.9.1999) by 1999 asp 1, s. 3(1)(b)

89 Interpretation of Part VII.

- (1) Where a patient is treated by virtue of this Part of this Act as if he had been removed to a hospital in Scotland in pursuance of a direction under Part VI of this Act, that direction shall be deemed to have been given on the date of his reception into the hospital.
- (2) In relation to a patient who has been received into guardianship in Scotland in pursuance of arrangements under this Part of this Act or under Part VI of the ^{M11}Mental Health Act 1959 or under Part VI of the ^{M12}Mental Health Act 1983, any reference in this Act to the local authority concerned shall be construed as a reference to the local authority for the place where he was received into guardianship as aforesaid.

Marginal Citations

M11 1959 c. 72.

M12 1983 c. 20.

Status:

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Changes to legislation:

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