

# ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

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## EXPLANATORY NOTES

### THE ACT – AN OVERVIEW

#### Part 4

#### Mental Health: Miscellaneous Amendments and Repeals

#### *Section 71 – Compulsory treatment orders and compulsion orders: cross-border transfer of patients etc.*

166. This section amends section 289 of the 2003 Act. Section 289 allows the Scottish Ministers to make regulations to make provision for, or in connection with, the removal from Scotland of a patient who is subject to a community-based compulsory treatment order or compulsion order. This amendment extends the scope of this regulation-making power through the insertion of new subsection (1)(b) of section 289, to allow for regulations to make provision for or in connection with the reception into Scotland from the rest of the UK, the Isle of Man or the Channel Islands, of patients subject to corresponding or similar community-based orders.
167. Subsection (1) amends section 289 to provide that regulations made under that provision may or shall make provision as to certain specified matters. Those matters include making exceptions as to notification requirements, allowing for powers and immunities to be conferred on those who are escorting patients who are being removed under the regulations or who are pursuing or restraining such patients in the event that they abscond, and requiring the reception of community-based patients into Scotland to take place only with the consent of hospital managers. In addition, subsection (1) amends section 289 so that regulations may also provide for amendments or modifications to be made to provisions in the 2003 Act or any other enactment.
168. Subsection (2) amends section 309 of the 2003 Act. These are consequential amendments to extend the scope of the provision allowing regulations to apply absconding provisions in the 2003 Act to patients from other jurisdictions, so that they may apply to non-detained patients as well as patients who are subject to detention.
169. Subsection (3) amends section 316(1)(c) of the 2003 Act. This is a consequential amendment to a provision in the 2003 Act regarding the scope of an offence of knowingly inducing or assisting a patient to abscond or harbouring a patient. The scope of that offence is extended so that it applies in relation to community-based patients who are being transferred under section 289 of the 2003 Act.
170. Subsection (4) amends section 326(4)(c) of the 2003 Act, to provide that regulations made under section 289 of the 2003 Act will be subject to affirmative resolution procedure in the Scottish Parliament.