

Draft Regulations laid before the Scottish Parliament under section 326(4) of the Mental Health (Care and Treatment) (Scotland) Act 2003, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2008 No.

MENTAL HEALTH

**The Mental Health (Absconding patients from
other jurisdictions) (Scotland) Regulations 2008**

Made - - - - 2008

Coming into force in accordance with regulation 1(1)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 309 and 326(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 326(4) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Mental Health (Absconding patients from other jurisdictions) (Scotland) Regulations 2008 and come into force on the day after the day on which they are made.

(2) In these Regulations—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995⁽²⁾;

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003;

a person is subject to “corresponding measures” in a relevant territory if under the law of that territory the person is subject to measures corresponding or similar to detention in hospital authorised by virtue of the 2003 Act or the 1995 Act, as construed in accordance with section 290(8)(a) of the 2003 Act⁽³⁾;

a person is subject to “corresponding requirements” in a relevant territory if under the law of that territory the person is subject to measures corresponding or similar to a requirement imposed in relation to a person under section 66(1) of the 2003 Act or section 57A(8) of the 1995 Act, not being detention in a hospital; and

(1) 2003 asp 13; section 309 was amended by section 71(2) of the [Adult Support and Protection \(Scotland\) Act 2007](#) (asp 10).

(2) 1995 c. 46; to which there are no relevant amendments.

(3) By virtue of section 290(7) of the 2003 Act, the reference in section 290(8)(a) to detention in hospital authorised by virtue of the 2003 Act or the 1995 Act includes a reference to a patient subject to suspension of detention or conditional discharge.

“relevant territory” means–

- (a) England and Wales;
- (b) Northern Ireland;
- (c) the Isle of Man; or
- (d) any of the Channel Islands.

Application of section 301 of the 2003 Act

2. Subject to regulation 3, section 301 of the 2003 Act applies to a person in Scotland who is–
 - (a) subject to corresponding measures or corresponding requirements in a relevant territory; and
 - (b) not subject to the application of section 302 of the 2003 Act by virtue of regulations 4 and 5.
3. In the application of section 301 of the 2003 Act to a person mentioned in regulation 2–
 - (a) references to a patient shall be construed as references to a person as mentioned in regulation 2;
 - (b) references in subsection (1) to a compulsory treatment order, and to the order, shall be construed as references to a measure in a relevant territory which is corresponding or similar to–
 - (i) a compulsory treatment order that authorises the detention of a patient in hospital;
 - (ii) an assessment order;
 - (iii) a treatment order;
 - (iv) a temporary compulsion order made under section 54(1)(c) of the 1995 Act;
 - (v) an interim compulsion order;
 - (vi) a compulsion order that authorises the detention of a patient in hospital;
 - (vii) a compulsion order and a restriction order;
 - (viii) a hospital direction; or
 - (ix) a transfer for treatment direction;
 - (c) references in subsections (1) and (2) to a hospital shall be construed as including references to a hospital as defined under the law of a relevant territory;
 - (d) the reference in subsection (1)(b) to a patient being transferred under section 124 of the 2003 Act shall be construed as a reference to a person being transferred under the provision in force in a relevant territory which is corresponding or similar to–
 - (i) section 124 of the 2003 Act (transfer from one hospital to another where a patient is subject to a compulsory treatment order);
 - (ii) section 124 as applied by section 178 of the 2003 Act (transfer from one hospital to another where a patient is subject to a relevant compulsion order); or
 - (iii) section 218 of the 2003 Act (transfer from one hospital to another where a patient is subject to a compulsion order and a restriction order, a hospital direction or a transfer for treatment direction);
 - (e) in subsection (2), the reference to a condition requiring that a patient be kept in the charge of an authorised person, and the reference to a patient who absconds from the charge of that authorised person, shall not apply;

- (f) the references in subsection (2) to a certificate under section 127(1) of the 2003 Act and to a condition under subsection (6) of that section shall be construed as references to a measure in a relevant territory which is corresponding or similar to—
 - (i) a certificate under section 127(1) of the 2003 Act and a condition under subsection (6) of that section (suspension of measure authorising detention where a patient is subject to a compulsory treatment order);
 - (ii) a certificate under section 127(1) and a condition under subsection (6) of that section, as applied by section 179 of the 2003 Act (suspension of measure authorising detention where a patient is subject to a relevant compulsion order);
 - (iii) a certificate under section 221(2) of the 2003 Act and a condition under subsection (6) of that section (suspension of measure authorising detention where a patient is subject to an assessment order); or
 - (iv) a certificate under section 224(2) of the 2003 Act and a condition under subsection (7) of that section (suspension of measure authorising detention where a patient is subject to a treatment order, an interim compulsion order, a compulsion order and a restriction order, a hospital direction or a transfer for treatment direction);
- (g) subject to paragraphs (e) and (f), references in subsections (2), (3) and (4) to a condition or requirement, whether or not by reference to any provision of the 2003 Act, shall be construed as references to the measure in a relevant territory which most closely corresponds to such a condition or requirement;
- (h) the reference in subsection (3) to a compulsory treatment order imposing a requirement that a patient reside at a specified place shall be construed as a reference to a measure in a relevant territory which is corresponding or similar to—
 - (i) a compulsory treatment order which imposes a requirement that a patient reside at a specified place; or
 - (ii) a compulsion order which imposes a requirement that a patient reside at a specified place; and
- (i) the reference in subsection (4) to a compulsory treatment order shall be construed as a reference to a measure in a relevant territory which is corresponding or similar to a compulsory treatment order or a compulsion order;
- (j) the reference in subsection (4) to the mental health officer shall be construed as a reference to the person in a relevant territory who is authorised to approve any proposed change of address.

Application of section 302 of the 2003 Act

- 4. Subject to regulation 5, section 302 of the 2003 Act applies to a person in Scotland who is—
 - (a) subject to corresponding measures or corresponding requirements in a relevant territory; and
 - (b) not subject to the application of section 301 of the 2003 Act by virtue of regulations 2 and 3.
- 5. In the application of section 302 of the 2003 Act to a person mentioned in regulation 4—
 - (a) references to a patient shall be construed as references to a person as mentioned in regulation 4.
 - (b) subject to paragraph (d), references to an order, certificate, condition, power or requirement, whether or not by reference to any provision of the 2003 Act, shall be construed as references to the measure in the relevant territory which most closely corresponds to such an order, certificate, condition, power or requirement;

- (c) references to a hospital shall be construed as including references to a hospital as defined under the law of a relevant territory;
- (d) in subsections (4), (5) and (6), references to a condition requiring that a patient be kept in the charge of an authorised person, and references to a patient who absconds from the charge of that authorised person, shall not apply.

Application of section 303 of the 2003 Act

6. Subject to regulation 7, section 303 of the 2003 Act applies to a person in Scotland who is subject to corresponding measures or corresponding requirements in a relevant territory.

7. In the application of section 303 of the 2003 Act to a person mentioned in regulation 6–

- (a) references to a patient shall be construed as references to a person as mentioned in regulation 6;
- (b) references in subsection (1)(b) and (c) to any other place considered appropriate by the patient’s responsible medical officer shall be construed as references to any place considered appropriate by–
 - (i) the person who, in relation to a person mentioned in regulation 6, carries out the role in a relevant territory which is corresponding or similar to that of a patient’s responsible medical officer; or
 - (ii) any medical practitioner;
- (c) the words in subsection (1)(b) “return the patient to the hospital in which the patient was detained or, as the case may be, take the patient to the hospital in which the patient was to be detained or, if that is not appropriate or practicable,” shall not apply;
- (d) subsections (2) and (3)(b) shall not apply;
- (e) the reference in subsection (3)(a)(iii) to a compulsory treatment order a condition of which requires the patient to reside in an establishment the address of which is specified in the order shall be construed as a reference to a measure in a relevant territory which is corresponding or similar to a compulsory treatment order or a compulsion order which requires a patient to reside in an establishment the address of which is specified in the order;
- (f) the reference in subsection (3)(a)(iv) to the patient’s responsible medical officer shall be construed as a reference to the person who, in relation to a person mentioned in regulation 6, carries out the role in a relevant territory which is corresponding or similar to that of a patient’s responsible medical officer;
- (g) the period specified in subsection (4) shall be any period in which the person is in Scotland and is subject to corresponding measures or corresponding requirements in a relevant territory; and
- (h) subsections (5) and (7) shall not apply.

St Andrew’s House,
Edinburgh
2008

Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 309 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) enables regulations to be made to make provision applying sections 301 to 303 of the 2003 Act to persons who are subject to corresponding measures or corresponding requirements (covering both detention and other compulsory measures under the 2003 Act and the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) in England and Wales, Northern Ireland, the Isle of Man or any of the Channel Islands (“relevant territories”).

Sections 301 to 303 of the 2003 Act make provision regarding the treatment of patients who have a mental disorder and are subject to specified measures under the 2003 Act who abscond or otherwise fail to comply with conditions or requirements under those measures. These Regulations apply those provisions, with modification, to persons in Scotland who are subject to mental health measures in relevant territories which are corresponding or similar to those made in Scotland under the 1995 Act or the 2003 Act and who abscond or otherwise fail to comply with conditions or requirements.

Regulation 2 applies section 301 of the 2003 Act to persons from relevant territories who are subject to measures corresponding or similar to detention or other measures under the 1995 Act or the 2003 Act, such as a requirement to reside in the community at a specified address. However, persons who fall within the scope of modified section 302 are excluded from the scope of modified section 301.

Regulation 3 modifies section 301 of the 2003 Act, where that provision applies to a person referred to in regulation 2.

It modifies section 301 so that references in that section to a patient are to be construed as references to a person as mentioned in regulation 2 (regulation 3(a)).

It modifies section 301(1) so that that provision applies to persons who are subject to measures in a relevant territory which are corresponding or similar to specified orders or directions made under the 1995 Act or the 2003 Act which follow on from criminal proceedings, as well as to measures in a relevant territory which are corresponding or similar to a compulsory treatment order authorising detention in hospital (regulation 3(b)).

It modifies section 301(1) and (2) so that references in those provisions to a hospital are to be construed as including references to a hospital as defined under the law of a relevant territory (regulation 3(c)).

It modifies a reference in section 301(1)(b) so that that provision applies to persons from relevant territories who abscond while being transferred from one hospital to another, whether they are subject to civil or criminal measures in a relevant territory (regulation 3(d)).

It modifies section 301(2) to exclude from the scope of that provision references to situations in which persons from relevant territories are authorised to keep patients in their charge while in Scotland, as provision has been made elsewhere in that respect in the Mental Health (Cross-border Visits) (Scotland) Regulations 2008 ([S.S.I. 2008/181](#)) (regulation 3(e)).

It modifies section 301(2) so that that provision applies to persons from relevant territories who fail to comply with conditions while subject to measures corresponding or similar to suspension of detention, whether those persons are subject to civil or criminal measures (regulation 3(f)).

It modifies section 301(2), (3) and (4) so that references in those provisions to a condition or requirement are to be construed as references to the measure in the relevant territory which most closely corresponds to such a condition or requirement (regulation 3(g)).

It modifies section 301(3) and (4) to extend the scope of those provisions to persons from relevant territories who fail to comply with a condition to reside at a specified place or obtain approval for a change of address while subject to a measure corresponding or similar to a compulsory treatment order or compulsion order in the community (regulation 3(h) and (i)).

It modifies section 301(4) so that the reference in that provision to obtaining the approval of the mental health officer to any proposed change of address is to be construed as a reference to the person in a relevant territory who is authorised to provide such approval in relation to a measure in that territory which is corresponding or similar to a compulsory treatment order or compulsion order in the community (regulation 3(j)).

Regulation 4 applies section 302 of the 2003 Act to persons from relevant territories who are subject to measures corresponding or similar to detention in hospital or other compulsory measures under the 1995 Act or the 2003 Act. However, persons who fall within the scope of modified section 301 are excluded from the scope of modified section 302.

Regulation 5 modifies section 302 of the 2003 Act, where that provision applies to a person referred to in regulation 4.

It modifies section 302 so that references in that section to a patient are to be construed as references to a person as mentioned in regulation 4 (regulation 5(a)).

It modifies section 302 so that references in that section to an order, certificate, condition, power or requirement are to be construed as references to the measure in the relevant territory which most closely corresponds to such an order, certificate, condition, power or requirement (regulation 5(b)).

It modifies section 302 so that references in that section to a hospital are to be construed as including references to a hospital as defined under the law of a relevant territory (regulation 5(c)).

It modifies section 302(4), (5) and (6) to exclude from the scope of those provisions references to situations in which persons from relevant territories are authorised to keep patients in their charge while in Scotland, as provision has been made elsewhere in that respect in the Mental Health (Cross-border Visits) (Scotland) Regulations 2008 (regulation 5(d)).

Regulation 6 applies section 303 of the 2003 Act to persons from relevant territories who are subject to measures corresponding or similar to detention or other measures under the 1995 Act or the 2003 Act.

Regulation 7 modifies section 303 of the 2003 Act, where that provision applies to a person referred to in regulation 6.

It modifies section 303 so that references in that section to a patient are to be construed as references to a person as mentioned in regulation 6 (regulation 7(a)).

It modifies section 303(1)(b) and (c) so that the references in those provisions to a patient being taken to a place considered appropriate by the patient's responsible medical officer are to be construed as references to a place considered appropriate by the person who carries out the role in a relevant territory which is corresponding or similar to a person's responsible medical officer, or, alternatively, any medical practitioner (regulation 7(b)).

It disapplies the reference in section 303(1)(b) to a patient being returned to the hospital in which he or she was detained or was to be detained, as these Regulations only apply to persons while they are in Scotland (regulation 7(c)).

It disapplies section 303(2) and 303(3)(b), which relate to powers to retake and return patients who abscond while on escorted suspension of detention, as provision has been made elsewhere in respect of the application of those provisions to cross-border patients in the Mental Health (Cross-border Visits) (Scotland) Regulations 2008 (regulation 7(d)).

It modifies section 303(3)(a)(iii) to extend the scope of that provision to members of staff at establishments at which persons are required to reside while subject to a measure in a relevant territory which is corresponding or similar to a compulsory treatment order or compulsion order in

the community (regulation 7(e)). Compulsory treatment orders and compulsion orders are the only types of orders under the 1995 Act or the 2003 Act which can directly impose compulsory measures in the community.

It modifies section 303(3)(a)(iv) so that the reference in that provision to a person authorised for the purposes of section 303(1) by the patient's responsible medical officer is to be construed as a reference to a person authorised by the person who carries out the role in a relevant territory which is corresponding or similar to a patient's responsible medical officer (regulation 7(f)).

It modifies section 303(4) so that the specified time during which a person may be taken into custody or taken or removed to a specified place is modified so as to be read as any period in which the person is in Scotland and is subject to corresponding measures or corresponding requirements in a relevant territory (regulation 7(g)).

In addition, references in section 303(5) and (7) to the expiry of the authorised period and to the specified time during which a patient ceases to be liable to be taken into custody are disapplied (regulation 7(h)). Accordingly, if a person is liable to be taken into custody under modified sections 301 or 302 of the 2003 Act, they will continue to be so liable during such time as they are in Scotland and are subject to corresponding measures or corresponding requirements in a relevant territory.