

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part One – the 2003 Act

Section 33: Dealing with absconding patients

Amendment of **section 303**

98. **Section 33** makes changes to sections 303, 309 and 310 of the 2003 Act with regard to provisions for absconding patients. Section 303 of the 2003 Act authorises certain persons to exercise powers in relation to any patient subject to an order authorising detention, where that patient has absconded. In particular, section 303(3)(a)(iii) gives a member of staff of any hospital, and where the patient liable to be taken into custody is subject to a compulsory treatment order which specifies a particular hospital, a member of staff of that establishment, the power, amongst other matters to take an absconding patient into custody.
99. **Section 33(2)** amends section 303(3)(a)(iii) to include a reference to a patient subject to an interim compulsory treatment order as well as a compulsory treatment order.

Amendment of **section 309 and 310**

100. Section 309 of the 2003 Act enables the Scottish Ministers to make regulations applying sections 301 to 303 of the 2003 Act to patients from England, Wales, Northern Ireland, the Isle of Man or the Channel Islands. Regulations made under section 309 allow persons who have absconded from those jurisdictions and are in Scotland to be taken into custody and returned to their own jurisdiction.
101. Section 33(3) of the Act amends section 309 by extending the power to make regulations applying provisions in relation to absconds, to persons in Scotland subject to corresponding requirements or measures in a member State of the European Union. The section further provides that regulations made under section 309 applying section 301 to 303 to patients from other jurisdictions or member states may apply specific provisions of Part 16 of the 2003 Act to allow persons held in custody by virtue of these provisions to be provided with medical treatment. The regulations may not however apply any of that Part to persons who are subject to detention in accordance with an emergency detention certificate EDC, or authorise medical treatment of the types mentioned in section 234 and 237 of the 2003 Act. The treatment excluded as a result of being mentioned in those sections is any surgical operation for destroying brain tissue or the functioning of brain tissue, electro-convulsive therapy, and any other types of medical treatment as are specified in regulations made under sections 234 or 237.
102. Section 310 of the 2003 Act currently provides for regulations to provide the circumstances in which certain patients, specified in section 310(3), may be taken into custody, and the steps that can be taken by specified persons upon taking such patients into custody. Section 33(4) of the Act provides that regulations made under that section

*These notes relate to the Mental Health (Scotland) Act
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may specify persons authorised by the patient's RMO as persons who can take such patients into custody.