
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 333

The Mental Health (Absconding Patients from Other Jurisdictions) (Scotland) Regulations 2008

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(1);

“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(2);

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(3), not being detention in a hospital; and

“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;

(1) 1995 c. 46; to which there are no relevant amendments.

(2) 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.

(3) Section 57A was inserted by section 133 of the 2003 Act.

- (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
1st October 2008

S ROBISON
Authorised to sign by the Scottish Ministers