



Mental Health (Scotland) Act 2015

2015 asp 9

PART 1

THE 2003 ACT

Cross-border transfers and absconding patients

32 Cross-border transfer of patients

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 289 (cross-border transfer: patients subject to requirement other than detention), in paragraph (b) of subsection (1)—
 - (a) the words from “a person” to the end become sub-paragraph (i),
 - (b) after that sub-paragraph (as so numbered) there is inserted—
 - “(ii) a person subject to corresponding requirements in a member State of the European Union (apart from the United Kingdom) and removed from that State.”.
- (3) In section 290 (cross-border transfer: patients subject to detention requirement or otherwise in hospital)—
 - (a) in paragraph (c) of subsection (1)—
 - (i) the words from “a person” to the end become sub-paragraph (i),
 - (ii) after that sub-paragraph (as so numbered) there is inserted—
 - “(ii) a person subject to corresponding measures in a member State of the European Union (apart from the United Kingdom) and removed from that State.”,
 - (b) for paragraph (f) of subsection (2) there is substituted—
 - “(f) enable an appeal against any such decision to be made by—
 - (i) such a patient,
 - (ii) the named person of such a patient,
 - (iii) if such a patient has no named person—
 - any guardian of such a patient,
 - any welfare attorney of such a patient,

the primary carer (if any) of such a patient,
the nearest relative of such a patient;”.

- (4) In section 309A (cross-border visits: leave of absence), in subsection (1)—
- (a) the words from “a person” to the end become paragraph (a),
 - (b) after that paragraph (as so numbered) there is inserted—
 - “(b) a person who is subject to a corresponding suspension of detention in a member State of the European Union (apart from the United Kingdom).”.

33 Dealing with absconding patients

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In paragraph (a)(iii) of subsection (3) of section 303 (taking into custody and return of absconding patients), after the words “compulsory treatment order” there is inserted “or an interim compulsory treatment order”.
- (3) In section 309 (patients from other jurisdictions)—
- (a) in subsection (1)—
 - (i) the words from “persons” to the end become paragraph (a),
 - (ii) after that paragraph (as so numbered) there is inserted—
 - “(b) persons in Scotland who are subject to corresponding requirements or corresponding measures in a member State of the European Union (apart from the United Kingdom).”.
 - (b) in subsection (2), for the words “Those regulations” there is substituted “Regulations under subsection (1) above”,
 - (c) after subsection (2) there is inserted—

“(2ZA) Regulations may make provision applying specific provisions in Part 16 of this Act to persons to whom sections 301 to 303 of this Act apply by virtue of subsection (1) above.

(2ZB) Regulations under subsection (2ZA) above may make such modifications of that Part in that application as the Scottish Ministers think fit.

(2ZC) But regulations under subsection (2ZA) above may not—

 - (a) apply any of that Part to persons who are subject to requirements or measures corresponding only to detention in hospital in accordance with an emergency detention certificate, or
 - (b) authorise medical treatment of the types mentioned in section 234(2) or 237(3) of this Act.”.
- (4) In section 310 (regulations as to absconding by other patients), after subsection (3) there is inserted—
- “(3A) In making provision as described in paragraphs (a) and (b) of subsection (1) above, regulations under that subsection may specify persons who are authorised by patients’ responsible medical officers.”.