

EXECUTIVE NOTE

DRAFT : The Mental Health (Cross-border Visits) (Scotland) Regulations 2008

The above instrument was made in exercise of the powers conferred by section 309A of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). The instrument is subject to the affirmative resolution procedure.

Policy Objectives

The purpose of the instrument is to make provision in connection with escorted mental health patients who visit Scotland while on leave of absence under the law of England and Wales, Northern Ireland, the Isle of Man or any of the Channel Islands. In particular, the instrument seeks to put beyond doubt the powers of escorts authorised under the law of those other territories to convey such patients while in Scotland. In addition, the regulations make provision for such escorts to have the power to restrain and retake such patients in the event that they abscond. The latter powers are conferred by way of applying provisions in the 2003 Act (sections 302 and 303), with modification, to such persons.

Before insertion of section 309A into the 2003 Act and the making of this instrument, there was no provision in, or under, the 2003 Act, in respect of short term cross-border visits to Scotland by patients from other territories.

The effect of the instrument will be to allow patients who are subject to mental health measures in the territories referred to above to be granted short term leave of absence for the purpose of, for example, visiting a sick relative in Scotland, or attending a wedding or funeral in Scotland, before returning to their “home territory”.

Consultation

We have consulted colleagues in the territorial departments (England, Wales, Northern Ireland, Isle of Man and the Channel Islands) and in the Ministry of Justice on the terms of the instrument.

Financial Effects

The instrument has no financial effects on the Scottish Government or any other organisation.

Primary and Community Care Directorate Mental Health Division

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