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## 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.