

EXECUTIVE NOTE

DRAFT : THE MENTAL HEALTH (ABSCONDING PATIENTS FROM OTHER JURISDICTIONS) (SCOTLAND) REGULATIONS 2008

The above instrument would be made in exercise of the powers conferred by sections 309 and 326(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). The instrument is subject to affirmative resolution procedure.

Policy Objectives

The purpose of the instrument is to make provision for the taking into custody of a person who is subject to compulsory measures under mental health legislation in England and Wales, Northern Ireland, the Channel Islands or the Isle of Man and who is found in Scotland, as a result of their having absconded, or otherwise having failed to comply with the requirements of the order or other measure to which they are subject. The regulations apply both to persons who are subject to measures corresponding or similar to detention under specified measures under the 2003 Act or the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) and to persons who are subject to measures corresponding or similar to community based orders, such as a requirement to reside in the community at a specified address.

The instrument seeks to make such provision by applying to such persons, (with some appropriate modification), the sections of the 2003 Act (sections 301 to 303) which provide for the taking into custody of absconding patients who are subject to civil compulsory mental health measures in Scotland.

Section 301 of the 2003 Act, as enacted, makes provision regarding patients who are subject to a compulsory treatment order and who abscond or otherwise fail to comply with the requirements of such an order. The instrument modifies section 301 of the 2003 Act, as it applies to persons from the other specified territories who abscond to Scotland. It includes within the scope of that modified provision persons who are subject to measures in one of those other specified territories which are corresponding or similar to specified orders or directions made under the 2003 Act or the 1995 Act which follow on from criminal proceedings, as well as persons who are subject to measures corresponding or similar to a compulsory treatment order.

Section 302 of the 2003 Act, as enacted, makes provision regarding patients who are subject to other emergency or short-term mental health measures and who abscond or otherwise fail to comply with the requirements of such measures. The instrument modifies section 302 of the 2003 Act, as it applies to persons in Scotland who are subject to corresponding or similar measures in one of the other specified territories referred to above.

Section 303 of the 2003 Act, as enacted, makes provision regarding the taking into custody and return of absconding patients. The instrument modifies section 303 of the 2003 Act, as it applies to persons who are subject to measures in one of the other specified territories which are corresponding or similar to detention, or other measures, under the 2003 Act or the 1995 Act and who abscond to Scotland. The intended effect of modified section 303 is that a person will continue to be liable to be taken into custody during such time as they are in Scotland and continue to be subject to the relevant mental health measures under the law of

one of the other specified territories. The person may then be taken to a place within Scotland, or returned to the territory from which they absconded.

The instrument also modifies section 303 of the 2003 Act by amending the persons who may identify a place to which an absconding patient may be taken. This provision is extended to include not only the person in one of the other specified territories who carries out the role corresponding or similar to that of a patient's responsible medical officer, but also any medical practitioner. This reflects the fact that the person who carries out the role equivalent to that of a patient's responsible medical officer will be based in another territory outside Scotland and may therefore not be immediately contactable or able to make such a decision in the event that the person for whom they are responsible absconds to Scotland.

The instrument, along with the Mental Health (Cross-border Visits) (Scotland) Regulations 2008 (SSI 2008/181), is intended to bring provision dealing with persons in Scotland who abscond or otherwise fail to comply with requirements imposed under mental health measures applicable in one of the other specified territories within the scope of the Scottish mental health legislation. At present, similar provision is made in section 88 of the Mental Health Act 1983 (which extends to Scotland), in respect of absconding patients from England and Wales, but that provision will be repealed in Scotland and replaced by this instrument.

Consultation

The other UK and island jurisdictions, along with the Ministry of Justice, have been consulted on the terms of the instrument. An extensive consultation exercise was also carried out in relation to these Regulations as part of the introduction of the Mental Health (Care and Treatment) (Scotland) Act 2003.

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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