

Draft Regulations laid before the Scottish Parliament under section 326(4)(c) of the Mental Health (Care and Treatment) (Scotland) Act 2003 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

MENTAL HEALTH

**The Mental Health (Absconding) (Miscellaneous Amendments)
(Scotland) Regulations 2017**

Made - - - - 2017

Coming into force - - 30th June 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 309, 310 and 326(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003(a) and all other powers enabling them to do so.

In accordance with section 326(4)(c)(b) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Mental Health (Absconding) (Miscellaneous Amendments) (Scotland) Regulations 2017 and come into force on 30th June 2017.

(2) In these Regulations—

“the 2005 Regulations” means the Mental Health (Absconding by mentally disordered offenders) (Scotland) Regulations 2005(c);

“the 2008 Regulations” means the Mental Health (Absconding Patients from Other Jurisdictions) (Scotland) Regulations 2008(d).

Amendment of the 2005 Regulations

2.—(1) The 2005 Regulations are amended as follows.

(2) In regulation 3 (taking into custody by specified persons), after paragraph (c) insert—

“(ca) a person authorised by the patient’s responsible medical officer;”.

(a) 2003 asp 13. Section 309 was amended by section 71(2) of the Adult Support and Protection (Scotland) Act 2007 (asp 10). Sections 309 and 310 were amended by section 33(3) and (4) of the Mental Health (Scotland) Act 2015 (asp 9).
(b) Section 326(4)(c) has been modified by paragraph 5 of Schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and was amended by section 16(7) of the Mental Health (Scotland) Act 2015 (asp 9).
(c) S.S.I. 2005/463.
(d) S.S.I. 2008/333.

Amendment of the 2008 Regulations

3.—(1) The 2008 Regulations are amended as follows.

(2) In the definition of “relevant territory” in regulation 1(2) (citation, commencement and interpretation)—

- (a) in paragraph (c) omit “or”; and
- (b) after paragraph (d) insert—
 - “; or
- (e) any member State of the European Union (other than the United Kingdom)”.

(3) In regulation 7(e)—

- (a) after “compulsory treatment order” where it first appears, insert “or an interim compulsory treatment order”; and
- (b) after “compulsory treatment order” where it second appears, insert “, an interim compulsory treatment order”.

(4) After regulation 7, insert—

“Medical Treatment

8.—(1) Subject to regulations 9 to 14 and where paragraph (2) applies, sections 233, 238, 240, 241, 242 and 243 of the 2003 Act apply to a person in Scotland who is subject to corresponding measures or corresponding requirements in a relevant territory.

(2) This paragraph applies where—

- (a) the corresponding measures or corresponding requirements to which the person is subject correspond to any of—
 - (i) an assessment order;
 - (ii) a compulsion order that authorises the detention of a patient in hospital;
 - (iii) a compulsion order and a restriction order;
 - (iv) a compulsory treatment order that authorises the detention of a patient in hospital;
 - (v) a hospital direction;
 - (vi) an interim compulsion order;
 - (vii) an interim compulsory treatment order that authorises the detention of a patient in hospital;
 - (viii) a short-term detention certificate;
 - (ix) a temporary compulsion order made under section 54(1)(c) of the 1995 Act;
 - (x) a transfer for treatment direction;
 - (xi) a treatment order; and
- (b) following a medical examination of the person by an approved medical practitioner, that approved medical practitioner considers that—
 - (i) the person has a mental disorder;
 - (ii) because of the mental disorder, the person’s ability to make decisions about the provision of medical treatment is significantly impaired;
 - (iii) if the person was not liable to be taken into custody in accordance with these Regulations, it would be necessary to detain the person for the purposes of giving medical treatment to the person; and
 - (iv) if the person was not treated, there would be significant risk to the safety and welfare of the person or significant risk to the safety of any other person.

9. In the application of section 233 of the 2003 Act to a person mentioned in regulation 8—

- (a) subsections (1), (2), (3), (5) and (6) shall not apply;
- (b) references in subsection (4) to a patient shall be construed as references to a person as mentioned in regulation 8; and
- (c) the reference in subsection (4) to functions conferred by Part 16 of the 2003 Act shall be construed as a reference to functions conferred by these Regulations.

10. In the application of section 238 of the 2003 Act to a person mentioned in regulation 8—

- (a) references to a patient shall be construed as references to a person as mentioned in regulation 8;
- (b) references to a responsible medical officer shall be construed as references to the medical practitioner primarily responsible for treating the person;
- (c) the reference in subsection (1) to section 237(3) shall not apply;
- (d) the reference in subsection (1) to treatment being given in accordance with this section shall be construed as a reference to treatment being given in accordance with these Regulations; and
- (e) the reference in subsection (1)(c) to authorisation by virtue of the 2003 Act or the 1995 Act shall be construed as a reference to authorisation by virtue of these Regulations.

11. In the application of section 240 of the 2003 Act to a person mentioned in regulation 8—

- (a) references to a patient shall be construed as references to a person as mentioned in regulation 8;
- (b) subsections (1), (4), (5), (6) and (7) shall not apply; and
- (c) the reference in subsection (2) to subsection (4) shall not apply.

12. In the application of section 241 of the 2003 Act to a person mentioned in regulation 8—

- (a) references to a patient shall be construed as references to a person as mentioned in regulation 8;
- (b) references to a responsible medical officer shall be construed as references to the medical practitioner primarily responsible for treating the person; and
- (c) the reference in subsection (1)(b) to authorisation by virtue of the 2003 Act or the 1995 Act shall be construed as a reference to authorisation by virtue of these Regulations.

13. In the application of section 242 of the 2003 Act to a person mentioned in regulation 8—

- (a) references to a patient shall be construed as references to a person as mentioned in regulation 8;
- (b) references to a responsible medical officer shall be construed as references to the medical practitioner primarily responsible for treating the person; and
- (c) subsections (1), (5)(a)(iii) and (iv), (5)(b) and (5)(e) shall not apply.

14. In the application of section 243 of the 2003 Act to a person mentioned in regulation 8—

- (a) references to a patient shall be construed as references to a person as mentioned in regulation 8;

- (b) the reference in subsection (6) to a responsible medical officer shall be construed as a reference to the medical practitioner primarily responsible for treating the person;
- (c) subsection (1) shall not apply; and
- (d) the words in subsection (5) “if the patient is capable of consenting but does not consent to the treatment” shall not apply.”

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Mental Health (Absconding by mentally disordered offenders) (Scotland) Regulations 2005 (“the 2005 Regulations”) and the Mental Health (Absconding Patients from Other Jurisdictions) (Scotland) Regulations 2008 (“the 2008 Regulations”).

The 2005 Regulations make provision in relation to patients who are subject to certain orders or directions made under the criminal justice system in Scotland and who have absconded within Scotland. Regulation 3 of the 2005 Regulations specifies persons who may take such patients into custody. Regulation 2 of these Regulations amends regulation 3 of the 2005 Regulations to add persons authorised by the patient’s responsible medical officer to that list of specified persons.

The 2008 Regulations make provision in relation to persons in Scotland who have absconded from jurisdictions outside of Scotland. Regulation 3 of these Regulations makes amendments to the 2008 Regulations, including to add member States of the European Union to the jurisdictions listed as “relevant territories” for the purposes of the 2008 Regulations.

These Regulations also insert a series of provisions into the 2008 Regulations that apply (with modifications) certain sections from Part 16 (medical treatment) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). The sections from Part 16 are applied in relation to persons who have been examined by an approved medical practitioner and who are subject to measures or requirements corresponding to listed measures or requirements in the 2003 Act or the Criminal Procedure (Scotland) Act 1995 that involve detention of the patient.

The sections from Part 16 of the 2003 Act that are applied (with modifications) are—

- Section 233 (designated medical practitioners), in relation to powers to interview and examine a person who has absconded and to require their medical records.
- Section 238 (where patients are capable of consenting and not refusing consent), in relation to treatments under section 240.
- Section 240 (treatments given over period of time).
- Section 241 (treatment mentioned in section 240(3): patients refusing consent or incapable of consenting).
- Section 242 (treatment not mentioned in section 234(2), 237(3) or 240(3)).
- Section 243 (urgent medical treatment).