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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 181**

**MENTAL HEALTH**

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

*Made - - - - 6th May 2008*

*Coming into force in accordance with regulation 1(1)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 309A of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 326(4) 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 (Cross-border Visits) (Scotland) Regulations 2008 and come into force on the day after the day on which they are made.

(2) In these Regulations—

“the Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003;

“cross-border patient” means a person who is subject to a corresponding suspension of detention in England, Wales, Northern Ireland, the Isle of Man or any of the Channel Islands; a person is subject to a “corresponding suspension of detention” in a relevant territory if under the law of that territory—

- (a) but for the leave of absence mentioned in paragraph (b), the person would be subject to measures corresponding or similar to detention in hospital authorised by virtue of the Act or the Criminal Procedure (Scotland) Act 1995<sup>(2)</sup>; and
- (b) the person has been granted a leave of absence subject to a condition corresponding or similar to the condition set out in section 127(6)(a) of the Act; and

“relevant territory” means—

- (a) England and Wales;
- (b) Northern Ireland;

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(1) 2003 asp 13; section 309A was inserted by section 72 of the [Adult Support and Protection \(Scotland\) Act 2007](#) (asp 10).

(2) 1995 c. 46; to which there are no relevant amendments.

- (c) the Isle of Man; or
- (d) any of the Channel Islands.

**Powers in relation to cross-border patients**

- 2.—(1) Where a cross-border patient is in Scotland—
- (a) that patient may be kept in the charge of a person authorised for that purpose in relation to the leave of absence referred to in paragraph (b) of the definition of “corresponding suspension of detention”; and
  - (b) sections 302 and 303 of the Act shall apply to that patient as they apply to a patient in respect of whom—
    - (i) a certificate under section 127(3) of the Act has effect; and
    - (ii) a condition under subsection (6) of that section requires that the patient be kept in the charge of an authorised person.
- (2) In the application of sections 302 and 303 of the Act in such a case—
- (a) references to an authorised person, and to the person who is authorised under section 127(6) of the Act, shall be construed as references to the person authorised as mentioned in paragraph (1)(a);
  - (b) references to any place, or any other place, considered appropriate by the patient’s responsible medical officer shall be construed as references to any place considered appropriate by—
    - (i) the person who granted the leave of absence referred to in paragraph (b) of the definition of “corresponding suspension of detention” or any person who could grant such leave of absence in relation to the cross-border patient; or
    - (ii) any medical practitioner;
  - (c) the period specified in section 303(4) shall be any period in which the cross-border patient is in Scotland; and
  - (d) section 303(7) shall not apply.

St Andrew’s House,  
Edinburgh  
6th May 2008

*S ROBISON*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision in connection with escorted mental health patients who visit Scotland whilst on leave of absence under the law of England and Wales, Northern Ireland, the Isle of Man or any of the Channel Islands (“a relevant territory”).

Section 309A of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) enables regulations to be made to make provision for and in connection with the keeping in charge of a person who is subject to a corresponding suspension of detention in a relevant territory, for applying sections 301 to 303 of the 2003 Act to such persons and for making such modifications of those sections in that application as the Scottish Ministers think fit.

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 or the Criminal Procedure (Scotland) Act 1995 who abscond or otherwise fail to comply with conditions or requirements under those measures. Accordingly:

The Regulations provide that where such a patient as mentioned in the first paragraph is in Scotland, they may be kept in the charge of a person who is authorised for that purpose in relation to the leave of absence granted in a relevant territory (regulation 2(1)(a)).

The Regulations also make provision for sections 302 and 303 of the 2003 Act to apply, with modification, to such patients as they apply to a patient who is subject to a certificate of suspension of detention under section 127(3) of the 2003 Act and a condition under section 127(6) of the 2003 Act that the patient be kept in the charge of an authorised person (regulation 2(1)(b)).

Regulation 2(2) modifies section 302 and 303 of the 2003 Act as those provisions apply to mental health patients who are in Scotland while on leave of absence under the law of a relevant territory. In that application:

References in sections 302 and 303 of the 2003 Act to an authorised person and to a person authorised under section 127(6) are modified so as to be construed as references to the person who is authorised under the law of a relevant territory to keep the patient in custody while on leave of absence (regulation 2(2)(a)).

References in section 303 of the 2003 Act to an absconding patient being taken to a place considered appropriate by the patient’s responsible medical officer are modified so as to be construed as references to a place considered appropriate by either the person who, under the law of a relevant territory, authorised the leave of absence, or could authorise such leave of absence in relation to the patient, or alternatively, any other medical practitioner (regulation 2(2)(b)).

References in section 303(4) to the specified period of time during which an absconding patient may be taken into custody or taken or removed to a specified place are modified so as to be read as any period in which the patient is in Scotland (regulation 2(2)(c)).

References to the specified time during which an absconding patient ceases to be liable to be taken into custody are disapplied (regulation 2(2)(d)). Accordingly, if the patient is liable to be taken into custody under modified section 302 of the 2003 Act, they will continue to be so liable during such time as they are in Scotland.