

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part One – the 2003 Act

Section 32: Cross-border transfer of patients

Amendment of sections 289, 290 and 309A

93. Section 32 of the Act makes a number of small changes to provisions relating to cross-border transfer of patients.
94. Sections 289 and 290 of the 2003 Act give the Scottish Ministers power to make regulations allowing, respectively, for the cross-border transfer of patients subject to measures other than detention, and the cross-border transfer of patients subject to detention. Section 32(2) amends section 289 of the 2003 Act by extending the power to make regulations in respect of the cross-border transfer of patients subject to requirement other than detention, to include persons subject to equivalent requirements in a member state of the European Union. Section 32(3) amends section 290 in the same way in respect of cross-border transfer for patients subject to detention requirements or otherwise in hospital. It also requires regulations under section 290 to provide a right of appeal against the transfer to the patient, the patient's named person or, if there is no named person, any guardian, welfare attorney, carer or nearest relative.
95. Section 309A of the 2003 Act allows the Scottish Ministers to make regulations for and in connection with the keeping in charge of a person who is subject to escorted leave of absence authorised under legislation in force in another part of the UK, or in the Isle of Man or the Channel Islands. Regulations made under that section may make such provision by applying provisions of the 2003 Act dealing with absconding patients (sections 301 to 303 of the 2003 Act), with or without modification, to such patients. This enables regulations to make clear the powers of persons escorting patients under authority conferred under legislation in force in other territories, so that there is clear authority under the 2003 Act for those persons to continue to escort the patient whilst in Scotland.
96. ***Section 32(4)*** amends section 309A so that regulations made under that section can make provision for and in connection with the keeping in charge of a person who is subject to escorted leave of absence authorised under legislation in force in another member State of the European Union.
97. The effect of all of these changes is that regulations that currently make provision for the cross-border transfer of patients within the UK, under various orders, can now provide for the cross-border transfer of patients within the European Union, provided those patients are subject to equivalent requirements in their home country.