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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.