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Health and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Sport.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/health-committee.aspx>



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Colin Smyth
Scottish Labour



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Scottish National Party

Mental Health (Absconding) (Miscellaneous Amendments) (Scotland) Regulations 2017 [draft]

The Committee reports to the Parliament as follows-

1. The Mental Health (Absconding) (Miscellaneous Amendments) (Scotland) Regulations 2017 [draft] were laid before the Parliament on 12 May 2017 and referred to the Health and Sport Committee.
2. The regulations are subject to the affirmative procedure (Rule 10.6). It is for the Health and Sport Committee to recommend to the Parliament whether the Regulations should be approved.
3. 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”).
4. 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. They specify persons who may take such patients into custody. Regulation 2 of this instrument adds persons authorised by the patient’s responsible medical officer to the list of specified persons in the 2005 Regulations.
5. The 2008 Regulations make provision in relation to persons in Scotland who have absconded from jurisdictions outside Scotland. Regulation 3 of this instrument amends the 2008 Regulations, including to add member States of the EU to the jurisdictions listed as “relevant territories” for the purposes of the 2008 Regulations.
6. This instrument also inserts a series of provisions in the 2008 Regulations, that apply with modifications to certain sections of Part 16 (medical treatment) of the Mental Health (Care and Treatment) (Scotland) Act 2003. The sections of 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, which involve detention of the patient.
7. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 23 May 2017 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

[Delegated Powers and Law Reform Committee, 27th Report 2017 \(Session 5\)](#)

8. At the Health and Sport Committee's 16th meeting on the 13 June 2017, the Committee took evidence on the regulations from—
 - Maureen Watt, Minister for Mental Health;

- Ruth Wilson, Senior Policy Advisor, Mental Health and Protection of Rights Division; and
- Ailsa Garland, Solicitor, Scottish Government

9. Motion S5M-05753 was lodged by Maureen Watt, Minister for Mental Health. Following the evidence session, Maureen Watt moved the motion S5M-05753—

That the Health and Sport Committee recommends that the Mental Health (Absconding) (Miscellaneous Amendments) (Scotland) Regulations 2017 [draft] be approved.

After debate, the motion was disagreed to (by division: For 2, Against 6, Abstentions 3).

10. The evidence taken and debate held at the meeting on 13 June 2017 can be found in the [Official Report](#).

11. The Health and Sport Committee recommends to Parliament that the Mental Health (Absconding) (Miscellaneous Amendments) (Scotland) Regulations 2017 [draft] not be approved.

Mental Health (Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2017 [draft]

The Committee reports to the Parliament as follows-

12. The Mental Health (Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2017 [draft] were laid before the Parliament on 15 May 2017 and referred to the Health and Sport Committee.
13. The Regulations are subject to the affirmative procedure (Rule 10.6). It is for the Health and Sport Committee to recommend to the Parliament whether the Regulations should be approved.
14. The Regulations make provision about the transfer to and from Scotland of mental health patients who are not subject to a detention requirement. They amend the principal 2008 Regulations with the same title. The 2008 Regulations set out the process for the transfer of patients on community-based orders between Scotland and England or Wales.
15. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 30 May 2017.

[Delegated Powers and Law Reform Committee 30th Report 2017 \(Session 5\)](#)

16. The Delegated Powers and Law Reform Committee identified minor drafting errors with the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2017 [draft].
17. In its report the Committee noted “Accordingly as a very limited exception to the Committee’s normal approach, the Committee accepts the Scottish Government’s proposed approach of correcting the highly evident errors on the signing copy of these two mental health instruments.”
18. At the Health and Sport Committee’s 16th meeting on the 13 June 2017, the Committee took evidence on the regulations from—
 - Maureen Watt, Minister for Mental Health;
 - Eleanor Stanley, Policy Officer, Mental Health and Protection of Rights Division;
 - Nicola Paterson, Head of Protection of Rights Unit, Mental Health and Protection of Rights Division; and
 - Fraser Gough, Parliamentary Counsel, Scottish Government
19. Motion S5M-05951 was lodged by Maureen Watt, Minister for Mental Health. Following the evidence session, Maureen Watt moved the motion S5M-05951—

That the Health and Sport Committee recommends that the Mental Health (Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2017 [draft] be approved.

The motion was agreed to without division.

20. The evidence taken and debate held at the meeting on 13 June 2017 can be found in the [Official Report](#).

21. **The Health and Sport Committee recommends to Parliament that the Mental Health (Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2017 [draft] be approved.**

Mental Health (Cross-border transfer: patients subject to detention requirements or otherwise in hospital) (Scotland) Amendment Regulations 2017 [draft]

The Committee reports to the Parliament as follows-

22. The Mental Health (Cross-border transfer: patients subject to detention requirements or otherwise in hospital) (Scotland) Amendment Regulations 2017 was laid before the Parliament on 15 May 2017 and referred to the Health and Sport Committee.
23. The Mental Health (Cross-border transfer: patients subject to detention requirements or otherwise in hospital) (Scotland) Amendment Regulations 2017 [draft] is subject to affirmative procedure (Rule 10.6). It is for the Health and Sport Committee to recommend to the Parliament whether the Regulations should be approved.
24. These regulations amend the Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005 to take account of provisions in the Mental Health (Scotland) Act 2015. The 2005 Regulations set out the process for:
 - transferring a patient who is detained under either the Mental Health (Care and Treatment) (Scotland) Act 2003 or the relevant provisions of the Criminal Procedure (Scotland) Act 1995, from Scotland;
 - transferring a patient who is not detained but who is in hospital for treatment for a mental disorder from Scotland to outwith the UK; and
 - the reception of patients into Scotland from other UK jurisdictions, who are detained on a corresponding order.
25. The Mental Health (Scotland) Act 2015 makes amendments to the appeal rights that require to be included in Regulations. The instrument introduces a right of appeal for named persons against a decision to transfer the patient from Scotland. Where there is no named person and the person does not have capacity, the right of appeal is for the welfare guardian, welfare attorney, primary carer, or nearest relative. This is in line with provisions in the 2015 Act, as well as allowing for an onward appeal against the Mental Health Tribunal's decision. It also extends the process for receiving a patient on a corresponding order, to those transferring from another EU member State.
26. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 30 May 2017.

27. The Committee identified minor drafting errors with the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2017 [draft].
28. In its report the Committee noted “Accordingly as a very limited exception to the Committee’s normal approach, the Committee accepts the Scottish Government’s proposed approach of correcting the highly evident errors on the signing copy of these two mental health instruments.”
29. At the Health and Sport Committee’s 16th meeting on the 13 June 2017, the Committee took evidence on the regulations from—
 - Maureen Watt, Minister for Mental Health;
 - Eleanor Stanley, Policy Officer, Mental Health and Protection of Rights Division;
 - Nicola Paterson, Head of Protection of Rights Unit, Mental Health and Protection of Rights Division; and
 - Fraser Gough, Parliamentary Counsel, Scottish Government.
30. Motion S5M-05950 was lodged by Maureen Watt, Minister for Mental Health. Following the evidence session, Maureen Watt moved the motion S5M-05950—

That the Health and Sport Committee recommends that the Mental Health (Cross-border transfer: patients subject to detention requirements or otherwise in hospital) (Scotland) Amendment Regulations 2017 [draft] be approved.

The motion was agreed to without division.
31. The evidence taken and debate held at the meeting on 13 June 2017 can be found in the [Official Report](#).

32. The Health and Sport Committee recommends to Parliament that the Mental Health (Cross-border transfer: patients subject to detention requirements or otherwise in hospital) (Scotland) Amendment Regulations 2017 be approved.

Mental Health (Cross-border Visits) (Scotland) Amendment Regulations 2017 [draft]

The Committee reports to the Parliament as follows-

33. The Mental Health (Cross-border Visits) (Scotland) Amendment Regulations 2017 [draft] was laid before the Parliament on 15 May 2017 and referred to the Health and Sport Committee.
34. The Mental Health (Cross-border Visits) (Scotland) Amendment Regulations 2017 [draft] is subject to affirmative procedure (Rule 10.6). It is for the Health and Sport Committee to recommend to the Parliament whether the Regulations should be approved.
35. The Mental Health (Cross-border Visits) (Scotland) Amendment Regulations 2017 [draft] make provision in connection with escorted mental health patients who visit Scotland while on leave of absence under the law of another EU member state.
36. The Mental Health (Scotland) Act 2015 amended the Mental Health (Care and Treatment) (Scotland) Act 2003, to allow regulations made under section 309A of that Act to make equivalent provisions for EU countries as is currently allowed for other UK jurisdictions.
37. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 23 May 2017.

[Delegated Powers and Law Reform Committee, 27th Report 2017 \(Session 5\)](#)

38. At the Health and Sport Committee's 16th meeting on the 13 June 2017, the Committee took evidence on the regulations from—
 - Maureen Watt, Minister for Mental Health;
 - Eleanor Stanley, Policy Officer, Mental Health and Protection of Rights Division;
 - Nicola Paterson, Head of Protection of Rights Unit, Mental Health and Protection of Rights Division; and
 - Fraser Gough, Parliamentary Counsel, Scottish Government.
39. Motion S5M-05752 was lodged by Maureen Watt, Minister for Mental Health. Following the evidence session, Maureen Watt moved the motion S5M-05752—

That the Health and Sport Committee recommends that the Mental Health (Cross-border Visits) (Scotland) Amendment Regulations 2017 [draft] be approved.

The motion was agreed to without division.

40. The evidence taken and debate held at the meeting on 13 June 2017 can be found in the [Official Report](#).

41. The Health and Sport Committee recommends to Parliament that the Mental Health (Cross-border Visits) (Scotland) Amendment Regulations 2017 [draft] be approved.

The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions) Order 2017 [draft]

The Committee reports to the Parliament as follows-

42. The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions) Order 2017 [draft] was laid before the Parliament on 12 May 2017 and referred to the Health and Sport Committee.
43. The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions) Order 2017 [draft] is subject to affirmative procedure (Rule 10.6). It is for the Health and Sport Committee to recommend to the Parliament whether the Order should be approved.
44. The Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) includes a power for nurses, in certain circumstances and for specified purposes, to detain a person who is in hospital for treatment. The nurse's power to detain is exercised with a view to assessing whether the patient meets the criteria for the granting of an emergency or a short-term detention certificate.
45. The ‘community payback order’ was introduced by the Criminal Justice and Licensing (Scotland) Act 2010. It replaced probation orders, which were included in the 2003 Act. This Order clarifies that persons who are in hospital for mental health treatment by virtue of a community payback order can also be detained under that power contained in the 2003 Act (as amended).
46. This Order makes consequential amendments to section 299 of the 2003 Act, to clarify that this power will apply where a person is in hospital by virtue of a community payback order which includes a mental health treatment requirement. The Order will not affect the nurse's power to detain a person who is in hospital for treatment by virtue of a probation order which includes a mental health treatment requirement. This is required because probation orders have remained available for persons convicted of offences committed before 1 February 2011.
47. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 30 May 2017.

[Delegated Powers and Law Reform Committee 30th Report 2017 \(Session 5\)](#)

48. At the Health and Sport Committee's 16th meeting on the 13 June 2017, the Committee took evidence on the regulations from—
 - Maureen Watt, Minister for Mental Health;
 - Innes Fyfe, Team Leader Mental Health and Protection of Rights Division; and
 - Lindsay Anderson, Solicitor, Scottish Government.

49. Motion S5M-05949 was lodged by Maureen Watt, Minister for Mental Health. Following the evidence session, Maureen Watt moved the motion S5M-05949—

That the Health and Sport Committee recommends that the Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions) Order 2017 [draft] be approved.

The motion was agreed to without division.

50. The evidence taken and debate held at the meeting on 13 June 2017 can be found in the [Official Report](#).

- 51. The Health and Sport Committee recommends to Parliament that the Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions) Order 2017 [draft] be approved.**

Annex A - Evidence

Written Evidence

- [Carers Trust Scotland](#)
- [SAMH](#)
- [The Health and Social Care Alliance Scotland, See Me, the Scottish Independent Advocacy Alliance and the Scottish Recovery Network](#)
- [Royal College of Psychiatrists](#)
- [Mental Welfare Commission](#)
- [The Law Society of Scotland](#)
- [The Scottish Association of Social Work \(part of BASW UK\)](#)

