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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 232**

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

PART 2

Amendments to the principal Regulations

CHAPTER 1

Amendments to Part 1 (General)

**Amendment of regulation 1**

**5.**—(1) Regulation 1 of the principal Regulations (citation, commencement and interpretation) is amended as follows.

(2) After paragraph (1) insert—

“(1A) These Regulations may also be cited as the Mental Health (Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008.”.

(3) In paragraph (2)—

(a) omit the definition of “the appropriate national authority”;

(b) after the definition of “relevant requirement” insert—

““relevant territory” means—

(a) England;

(b) Wales;

(c) Northern Ireland;

(d) any of the Channel Islands;

(e) the Isle of Man; or

(f) a member State of the European Union (apart from the United Kingdom);”.

**Amendment of regulation 2**

**6.**—(1) Regulation 2 of the principal Regulations (application of Regulations) is amended as follows.

(2) In paragraph (3), for “England or Wales” substitute “a relevant territory”.

(3) In paragraph (4), for “England or Wales” substitute “a relevant territory”.

## CHAPTER 2

### Amendment to Part 2 (Removal of patients from Scotland)

#### Amendment of regulation 6

7. In regulation 6 of the principal Regulations (notification of decision), after paragraph (d) insert—

“(da) the patient’s primary carer;”.

#### New regulation 8A

8. After regulation 8 of the principal Regulations (appeal to Tribunal) insert—

##### “Ability to initiate appeal if no named person

8A.—(1) An appeal under regulation 8 may be initiated by one of the persons mentioned in paragraph (2) if—

- (a) the patient does not have a named person;
- (b) the patient has attained the age of 16 years; and
- (c) the patient is incapable in relation to a decision as to whether to initiate an appeal.

(2) The persons who may initiate an appeal by virtue of paragraph (1) are—

- (a) any guardian of the patient;
- (b) any welfare attorney of the patient;
- (c) unless the patient has made a written declaration precluding the person (or all persons) from initiating the appeal—
  - (i) the patient’s primary carer; and
  - (ii) the patient’s nearest relative.

(3) In paragraph (1)(c), “incapable” has the same meaning as in section 250 of the 2003 Act.

(4) Subsections (2), (3) to (5) and (7) of section 250 of the 2003 Act apply to a declaration mentioned in paragraph (2)(c) as they apply to a nomination to which subsection (1) of that section relates (with that section to be read accordingly).”.

#### Amendment of regulation 9

9.—(1) In regulation 9 of the principal Regulations (appeal from Tribunal), after paragraph (3) insert—

“(4) In relation to a case in which section 320 or 321 of the 2003 Act applies by virtue of this regulation, subsection (5) of section 257A of the 2003 Act<sup>(1)</sup> (ability to act if no named person) is to be ignored.”.

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(1) Section 257A of the Mental Health (Care and Treatment) (Scotland) Act 2003 is inserted by the Mental Health (Scotland) Act 2015, section 25.

## CHAPTER 3

### Amendments to Part 3 (Reception of persons in Scotland)

#### **Amendment of regulation 14**

**10.**—(1) Regulation 14 of the principal Regulations (reception in Scotland: consent) is amended as follows.

(2) In paragraph (1), for “England and Wales” substitute “a relevant territory”.

(3) In paragraph (3)(a), for “England and Wales” substitute “the territory from which the request is made”.

(4) In paragraph (4), after sub-paragraph (b) insert—

“(ba) the name and address of any guardian of the patient;

(bb) the name and address of any welfare attorney of the patient;”.

(5) In paragraph (5)(b), for “appropriate national authority informing them” substitute “person who made the request stating”.

#### **Amendment of regulation 15**

**11.** In regulation 15 of the principal Regulations (directions), for “the appropriate national authority” substitute “anyone”.

#### **Amendment of regulation 19**

**12.**—(1) Regulation 19 of the principal Regulations (reception in Scotland: general) is amended as follows.

(2) In paragraph (1), from the beginning to “if that”, substitute “Once a patient has been received in Scotland, the patient is to be treated as if the”.

(3) In paragraph (2), for “relevant measure” substitute “corresponding requirement”.

#### **Amendment of regulation 20**

**13.**—(1) Regulation 20 of the principal Regulations (patients subject to compulsory treatment order) is amended as follows.

(2) The text of the regulation, as it was immediately before this regulation came into force, becomes paragraph (1).

(3) After that paragraph insert—

“(2) Where a patient is being treated as if subject to a compulsory treatment order by virtue of regulation 19, an application may be made in respect of that order under section 100 of the 2003 Act (application by patient etc. for revocation or variation of order) before the end of the 3 month period specified in subsection (4) of that section.

(3) But an application may not be made by virtue of paragraph (2) until the patient’s responsible medical officer has decided not to make a determination under regulation 26 revoking the order.”.

#### **Amendment of regulation 22**

**14.** In regulation 22(2)(a) of the principal Regulations (powers of escorts)—

(a) for “England and Wales under the law of that territory” substitute “the territory from which the request for consent to the patient’s reception in Scotland was made”;

- (b) for “England and Wales” in the second place it occurs (or what would be the second place were it not for paragraph (a) of this regulation) substitute “that territory”.

#### **Amendment of regulation 25**

15. In regulation 25 of the principal Regulations (assessment of patients: post transfer), omit paragraph 5.

#### **New regulation 25A**

16. After regulation 25 of the principal Regulations insert—

##### **“Interpretation of regulation 25(3): conflict of interest**

25A.—(1) For the purposes of regulation 25(3), there is to be taken to be a conflict of interest in relation to the medical examination of a patient if the medical practitioner who carries out the examination is related to the patient in any degree specified in the schedule of the Conflict of Interest Regulations.

(2) Any enactment which governs the interpretation of the schedule of the Conflict of Interest Regulations for those Regulations’ own purposes also governs the interpretation of the schedule for the purposes of regulation 25(3).

(3) In this regulation, “the Conflict of Interest Regulations” means the Mental Health (Conflict of Interest) (Scotland) Regulations 2017(2).”.

#### **Amendment of regulation 28**

17.—(1) Regulation 28 of the principal Regulations (notification requirements: post assessment) is amended as follows.

(2) After paragraph (3)(b) insert—

“(ba) any guardian of the patient;

(bb) any welfare attorney of the patient;

(bc) any person named in the request for consent to the patient’s reception in Scotland as the patient’s nearest relative or primary carer (but see paragraphs (3A) to (3C));”.

(3) After paragraph (3) insert—

“(3A) Before giving notification under paragraph (2) to a person named as the patient’s nearest relative or primary carer, the managers of the receiving hospital must establish whether the patient objects to notification being given to that person.

(3B) If the patient objects to the person mentioned in paragraph (3A) being notified, the person is not to be notified under paragraph (2).

(3C) Paragraphs (3A) and (3B) do not apply where the person mentioned in paragraph (3A) is the patient’s named person, guardian or welfare attorney.”.

#### **Revocation of regulation 32**

18. Omit regulation 32 of the principal Regulations (visits to patients: duty on Commission).