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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2017 No.**

The Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Amendment Regulations 2017

PART 2

Amendments to the principal Regulations

CHAPTER 3

Amendments to Part 3 (Reception of patients in Scotland)

**Amendment of regulation 24**

**23.** In regulation 24(4) of the principal Regulations (reception in Scotland: consent), after subparagraph (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;”.

**Amendment of regulation 33**

**24.—**(1) Regulation 33 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 30, 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 mentioned 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 38 revoking the order.”.

**Amendment of regulation 36**

**25.** In regulation 36 of the principal Regulations (assessment of patient: post transfer), omit paragraph (7).

**New regulation 36A**

**26.** After regulation 36 of the principal Regulations insert—

### **“Interpretation of regulation 36(3): conflict of interest**

**36A.**—(1) For the purposes of regulation 36(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 36(3).

(3) In this regulation, “the Conflict of Interest Regulations” means the Mental Health (Conflict of Interest) (Scotland) Regulations 2017(1).”.

### **Amendment of regulation 38**

**27.**—(1) Regulation 38 of the principal Regulations (responsible medical officer’s duty to revoke: interim compulsory treatment order, compulsory treatment order and compulsion order) is amended as follows.

(2) In paragraph (2)(a), for “regulation 36(4)(c)” substitute “the applicable sub-paragraph of regulation 36(4)”.

(3) After paragraph (3) insert—

“(4) In paragraph (2)(a), “the applicable sub-paragraph of regulation 36(4)” means—

- (a) in the case of a patient subject to a compulsion order, sub-paragraph (a) of regulation 36(4);
- (b) in the case of a patient subject to an interim compulsory treatment order or a compulsory treatment order, sub-paragraph (c) of regulation 36(4).”.

### **Amendment of regulation 41**

**28.**—(1) Regulation 41 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 45**

**29.** Omit regulation 45 of the principal Regulations (visits to patients: duty on Commission).

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Amendment Regulations 2017 No. 229*

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