
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

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

PART 2

Amendments to the principal Regulations

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)(b), “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).”.

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 requirements other than detention) (Scotland) Regulations 2017 No. 232

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⁽¹⁾ (ability to act if no named person) is to be ignored.”.

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