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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**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 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**

1.—(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(1).”.

#### **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).