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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 2

Amendment to Part 2 (Removal of patients from Scotland)

**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).”