

Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Mental Health and Disability Sub-committee ("the committee") welcomes the opportunity to consider and respond to the Health and Sport Committee of the Scottish Parliament's call for views on Scottish Statutory Instruments under the Mental Health (Scotland) Act 2015. The committee is generally content with the terms of the SSIs and, given the short timescale, has only mentioned matters which are of significant concern.

Mental Health (Absconding) (Miscellaneous Amendments) (Scotland) Regulations 2017

We have a general concern about the assumption that procedures and conditions for compulsory mental health treatment in all EU countries are and will be sufficiently equivalent to Scottish standards (and sufficiently compliant with human rights requirements) for it to be safe to order the return of absconding patients without any requirement to ascertain that procedures in the original country are adequate and have been properly followed, and that conditions there are satisfactory.

During the Scottish Government's consultation, they said:

"Orders in other EU jurisdictions may not be fully equivalent with those in Scotland, for example, they may have different criteria for detention. We would not expect any patient to be detained if they did not also meet the criteria for detention under the 2003 Act and we are considering if the regulations should set out any specific safeguards."

In the past there have been substantial variations in procedures and conditions across the EU and, while progress towards harmonization is likely to have led to

improvements, elements of variation are likely to remain. Issues may also arise should new countries enter the EU. In order to sufficiently mitigate any potential risks in this regard it is important that appropriate safeguards are not dispensed with. We consider that such safeguards are essential in order to ensure human rights compliance and, therefore, the validity of the regulations among other things.

Mental Health (Cross-border Visits) (Scotland) Amendment Regulations 2017

A mechanism or provisions are required to avoid delays in cases of urgent transfers where there is delay in receiving the approval of Ministers.