



# Mental Health (Care and Treatment) (Scotland) Act 2003

## 2003 asp 13

### PART 17

#### PATIENT REPRESENTATION ETC.

### CHAPTER 1

#### NAMED PERSON

##### *Meaning of “named person”*

#### **250 Nomination of named person**

- (1) Where a person who has attained the age of 16 years (a “nominator”) nominates in accordance with subsection (2) below another person who has attained that age to be the nominator’s named person, that person is, subject to subsections (3) and (6) below, the nominator’s named person.
- (2) A person is nominated in accordance with this subsection if—
  - (a) the nomination is signed by the nominator;
  - (b) the nominator’s signature is witnessed by a prescribed person;
  - (c) the prescribed person certifies that, in the opinion of the prescribed person, the nominator—
    - (i) understands the effect of nominating a person to be the nominator’s named person; and
    - (ii) has not been subjected to any undue influence in making the nomination.
- (3) A nomination under subsection (1) above may be revoked by the nominator in accordance with subsection (4) below.
- (4) The nomination of a named person is revoked in accordance with this subsection if—
  - (a) the revocation is signed by the nominator;

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- (b) the nominator's signature is witnessed by a prescribed person;
- (c) the prescribed person certifies that, in the opinion of the prescribed person, the nominator—
  - (i) understands the effect of revoking the appointment of a person as named person; and
  - (ii) has not been subjected to any undue influence in making the revocation.
- (5) The nomination of a named person shall be effective notwithstanding the nominator's becoming, after making the nomination, incapable.
- (6) A person nominated under subsection (1) above may decline to be the nominator's named person by giving notice to—
  - (a) the nominator; and
  - (b) the local authority for the area in which the nominator resides,
 to that effect.
- (7) In this section—
  - “incapable” means incapable by reason of mental disorder or of inability to communicate because of physical disability; but a person shall not fall within this definition by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise); and
  - “prescribed person” means a person of a class prescribed by regulations.

#### **Commencement Information**

- I1** S. 250 in force at 1.9.2004 for specified purposes by [S.S.I. 2004/367](#), [art. 2](#), [Sch. 1](#)
- I2** S. 250 in force at 4.10.2004 in so far as not already in force by [S.S.I. 2004/367](#), [art. 3](#), [Sch. 2](#)

## **251 Named person where no person nominated or nominated person declines to act**

- (1) Subject to subsections (2) to (5) below, where, in the case of a person who has attained the age of 16 years, there is no person who is by virtue of section 250 of this Act the person's named person, the person's primary carer shall, unless the person's primary carer has not attained the age of 16 years, be the person's named person.
- (2) Where a person's primary carer has not attained the age of 16 years, but the person has a carer who has attained that age, that carer shall be the person's named person.
- (3) Where—
  - (a) a person does not have a primary carer; or
  - (b) a person's primary carer has not attained the age of 16 years,
 but the person has two or more carers who have attained the age of 16 years, those carers may agree which of them is to be the named person of the person.
- (4) Where, by virtue of subsection (2) or (3) above, a carer is a person's named person, the references in subsections (5) and (6) below to a person's primary carer shall be construed as references to that carer.
- (5) If—
  - (a) the person has no primary carer; or

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- (b) the person’s primary carer declines in accordance with subsection (6) below to be the person’s named person,  
the person’s nearest relative shall be the person’s named person.
- (6) A person’s primary carer declines in accordance with this subsection to be the person’s named person by giving notice to—
  - (a) the person; and
  - (b) the local authority for the area in which the person resides,  
to that effect.

#### Commencement Information

- I3** [S. 251](#) in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

## 252 Named person in relation to child

- (1) The named person of a person who has not attained the age of 16 years (“the child”) shall be—
  - (a) subject to subsection (2) below, in a case where [<sup>F1</sup>a relevant person] has parental rights and parental responsibilities in relation to the child, that person;
  - (b) in a case where the child is in the care of a local authority by virtue of a care order made under section 31 of the Children Act 1989 (c. 41), that authority; or
  - (c) in any other case, where the child’s primary carer has attained the age of 16 years, that person.
- (2) Subject to subsection (3) below, where two or more [<sup>F2</sup>relevant persons] have parental rights and parental responsibilities in relation to the child, the named person of the child shall be—
  - (a) if those persons agree that one of them is to be the named person of the child, that person; or
  - (b) if those persons do not so agree, the one of them—
    - (i) who provides, on a regular basis, all, or most, of the care for, and support to, the child;
    - (ii) in a case where the child is in hospital, who provided all, or most, of that care for, and support to, the child before the child was admitted to hospital.
- (3) If—
  - (a) one of the [<sup>F3</sup>relevant] persons who has parental rights and parental responsibilities in relation to the child is a local authority; and
  - (b) the local authority has those rights and responsibilities by virtue of an order under section 86(1) of the Children (Scotland) Act 1995 (c. 36) (orders transferring parental rights and parental responsibilities),the local authority shall be the child’s named person.
- (4) In this section—

“parental responsibilities”, in relation to a child, has the meaning given by section 1(3) of the Children (Scotland) Act 1995 (c. 36); <sup>F4</sup>...

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“parental rights”, in relation to a child, has the meaning given by section 2(4) of that Act <sup>F5</sup>; and

“relevant person” means—

- (a) a local authority; or
- (b) a person who has attained the age of 16 years.]

#### Textual Amendments

- F1** Words in s. 252(1)(a) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(20)(a)**
- F2** Words in s. 252(2) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(20)(b)**
- F3** Word in s. 252(3) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(20)(c)**
- F4** Word in s. 252(4) omitted (27.9.2005) by virtue of [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(20)(d)(i)**
- F5** Words in s. 252(4) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **Sch. 1 para. 32(20)(d)(ii)**

#### Commencement Information

- I4** S. 252 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

## 253 Declaration in relation to named person

- (1) Subject to subsection (4) below and to section 257 of this Act, where a person who has attained the age of 16 years (“the declarer”) makes a declaration in writing in accordance with subsection (2) below stating that a person specified in the declaration shall not be the declarer’s named person, that person shall not be the declarer’s named person.
- (2) A declaration is made in accordance with this subsection if—
  - (a) signed by the declarer; and
  - (b) witnessed by a prescribed person who certifies that, in the opinion of the prescribed person, the declarer—
    - (i) understands the effect of making the declaration; and
    - (ii) has not been subjected to any undue influence in making the declaration.
- (3) A declaration under this section shall be effective notwithstanding the individual’s becoming, after making the declaration, incapable.
- (4) A declaration under subsection (1) above may be revoked by the declarer in accordance with subsection (5) below.
- (5) A declaration is revoked in accordance with this subsection if the revocation is—
  - (a) signed by the declarer; and
  - (b) witnessed by a prescribed person who shall certify that, in the opinion of the prescribed person, the declarer—
    - (i) understands the effect of revoking the declaration; and

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(ii) has not been subjected to any undue influence in making the revocation.

(6) In this section, “incapable” and “prescribed person” have the same meaning as in section 250 of this Act.

#### Commencement Information

**I5** S. 253 in force at 1.9.2004 for specified purposes by [S.S.I. 2004/367, art. 2, Sch. 1](#)

**I6** S. 253 in force at 4.10.2004 in so far as not already in force by [S.S.I. 2004/367, art. 3, Sch. 2](#)

## 254 Meaning of “nearest relative”

(1) In this Act, “nearest relative”, in relation to a person (the “relevant person”), means—

- (a) subject to subsection (3) below, in a case where only one person falls within the list set out in subsection (2) below, that person;
- (b) subject to subsections (3) and (4) below, in a case where two or more persons fall within that list, the person falling within the paragraph first appearing in the list set out in subsection (2) below.

(2) The list mentioned in subsection (1) above is—

- (a) the relevant person’s spouse;
- (b) a person such as is mentioned in subsection (7) below;
- (c) the relevant person’s child;
- (d) the relevant person’s parent;
- (e) the relevant person’s brother or sister;
- (f) the relevant person’s grandparent;
- (g) the relevant person’s grandchild;
- (h) the relevant person’s uncle or aunt;
- (i) the relevant person’s niece or nephew;
- (j) the person mentioned in subsection (8) below.

(3) If the relevant person’s spouse—

- (a) is permanently separated (either by agreement or under an order of a court) from the relevant person; or
- (b) has deserted, or has been deserted by, the relevant person and the desertion continues,

subsection (2)(a) above shall be disregarded for the purposes of subsection (1) above.

(4) Where two or more persons fall within the paragraph first appearing on the list set out in subsection (2) above, the nearest relative shall be—

- (a) if those persons agree that one of them should be the nearest relative, that person; or
- (b) if those persons do not so agree, the person determined in accordance with the following rules—
  - (i) brothers and sisters of the whole blood shall be preferred over brothers and sisters of the half-blood; and
  - (ii) the elder or eldest, as the case may be, shall be preferred.

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- (5) A relevant person's nearest relative may decline to be the named person of the relevant person by giving notice to—
- (a) the relevant person; and
  - (b) the local authority for the area in which the relevant person resides, to that effect.
- (6) For the purposes of subsection (2) above—
- (a) a relationship of the half-blood shall, subject to subsection (4)(b)(i) above, be treated as a relationship of the whole blood;
  - (b) the stepchild of a person shall be treated as the child of that person;
  - (c) if the relevant person is ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man, any person who is not so resident shall be disregarded; and
  - (d) any person who is under 16 years of age shall be disregarded.
- (7) The person referred to in subsection (2)(b) above is a person who—
- (a) is living with the relevant person—
    - (i) as husband and wife; or
    - (ii) in a relationship which has the characteristics of the relationship between husband and wife except that the person and the relevant person are of the same sex; and
  - (b) has been living with the relevant person for a period of at least 6 months or, if the relevant person is for the time being in hospital [<sup>F6</sup>or in a care home service], had been living with the relevant person for such period when the relevant person was admitted to hospital [<sup>F7</sup>or to a care home service].
- (8) The person referred to in subsection (2)(j) above is a person who—
- (a) is living with the relevant person and has been living with the relevant person for a period of at least 5 years; or
  - (b) if the relevant person is in hospital [<sup>F8</sup>or in a care home service], had been living with the relevant person for such period when the relevant person was admitted to hospital [<sup>F9</sup>or to a care home service].

#### Textual Amendments

- F6** Words in s. 254(7)(b) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [sch. 1 para. 32\(21\)\(a\)\(i\)](#)
- F7** Words in s. 254(7)(b) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [sch. 1 para. 32\(21\)\(a\)\(ii\)](#)
- F8** Words in s. 254(8)(b) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [sch. 1 para. 32\(21\)\(b\)\(i\)](#)
- F9** Words in s. 254(8)(b) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [sch. 1 para. 32\(21\)\(b\)\(ii\)](#)

#### Commencement Information

- I7** S. 254 in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

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*Mental health officer's duties etc.*

**255 Named person: mental health officer's duties etc.**

- (1) Subsection (2) below applies where—
  - (a) a mental health officer is discharging any function by virtue of this Act or the 1995 Act in relation to a patient; and
  - (b) it is necessary for the purposes of the discharge of the function to establish whether the patient has a named person.
- (2) The mental health officer shall take such steps as are reasonably practicable—
  - (a) to establish whether the patient has a named person; and
  - (b) if so, to ascertain who that person is.
- (3) Subsection (4) below applies where the mental health officer—
  - (a) establishes that the patient does not have a named person; or
  - (b) is unable to establish whether the patient has a named person.
- (4) The mental health officer—
  - (a) shall make a record of the steps taken under subsection (2)(a) above; and
  - (b) may apply to the Tribunal for an order under section 257 of this Act.
- (5) Where the mental health officer makes a record under subsection (4)(a) above, the mental health officer shall, as soon as practicable, give a copy of the record to—
  - (a) the Tribunal; and
  - (b) the Commission.
- (6) Where by virtue of subsection (2) above—
  - (a) the mental health officer—
    - (i) establishes that the patient has a named person; and
    - (ii) ascertains the name of that person (“the apparent named person”); but
  - (b) the mental health officer considers that it is inappropriate for the apparent named person to be the patient's named person,

the mental health officer shall apply to the Tribunal for an order under section 257 of this Act.
- (7) Where—
  - (a) a mental health officer is discharging any function by virtue of this Act in relation to a patient; and
  - (b) it appears to the mental health officer—
    - (i) that the patient does not have a named person; or
    - (ii) that the patient has a named person (“the apparent named person”) but the mental health officer considers that it is inappropriate for the apparent named person to be the patient's named person,

the mental health officer may apply to the Tribunal for an order under section 257 of this Act.

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#### **Commencement Information**

**I8** [S. 255](#) in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

### *Applications to Tribunal by patient etc.*

## **256 Named person: application by patient etc.**

### **(1) Where—**

- (a) it appears to a person mentioned in subsection (2) below (any such person being referred to in this section as “the applicant”) that a patient does not have a named person;
- (b) the applicant considers that though the patient has a named person it is inappropriate that that person be the patient’s named person; or
- (c) circumstances of such description as may be prescribed by regulations exist, the applicant may apply to the Tribunal for an order under section 257 of this Act in relation to the patient.

### **(2) Those persons are—**

- (a) the patient;
- (b) the patient’s responsible medical officer;
- (c) if the patient is a child, any person who has parental responsibilities in relation to the patient;
- (d) if the patient is in hospital, the managers of the hospital;
- (e) any welfare attorney of the patient;
- (f) any guardian of the patient;
- (g) any relative of the patient; and
- (h) any other person having an interest in the welfare of the patient.

- (3) In subsection (2)(c) above, “child” and “parental responsibilities” have the same meanings as they have in Part I of the Children (Scotland) Act 1995 (c. 36).

#### **Commencement Information**

**I9** S. 256 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), [art. 2](#), [Sch. 1](#)

**I10** [S. 256](#) in force at 5.10.2005 in so far as not already in force by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

### *Tribunal’s powers*

## **257 Named person: Tribunal’s powers**

### **(1) Where—**

- (a) an application is made under section 255(4)(b) or (7)(b)(i) or 256(1)(a) of this Act; and
- (b) the Tribunal is satisfied that the patient does not have a named person,

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the Tribunal may, subject to subsection (4) below, make an order appointing the person specified in the order to be the patient's named person.

(2) Where—

- (a) an application is made under section 255(6) or (7)(b)(ii) or 256(1)(b) of this Act; and
- (b) the Tribunal is satisfied that it is inappropriate for the named person (“the acting named person”) to be the patient's named person,

the Tribunal may, subject to subsection (4) below, make an order declaring that the acting named person is not the named person or appointing the person specified in the order to be the patient's named person in place of the acting named person.

(3) Where an application is made under section 256(1)(c) of this Act, the Tribunal may, subject to subsection (4) below, make such order as it thinks fit.

(4) It shall not be competent for the Tribunal to make an order under this section appointing a person who has not attained the age of 16 years to be a patient's named person.

#### Commencement Information

- I11** [S. 257](#) in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

### Interpretation of Chapter

## 258 Interpretation of Chapter

In this Chapter, other than section 252, “person” means a natural person.

#### Commencement Information

- I12** [S. 258](#) in force at 1.9.2004 by [S.S.I. 2004/367](#), [art. 2](#), [Sch. 1](#)

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**Changes to legislation:**

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