



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

2003 asp 13

PART 17

PATIENT REPRESENTATION ETC.

CHAPTER 1

NAMED PERSON

[^{F1}Ability to act if no named person

[^{F1}257A Ability to act if no named person

- (1) This section applies if—
 - (a) a 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 application or appeal in the patient's case.
- (2) In subsection (1)(c) above, “incapable” has the same meaning as in section 250 of this Act.
- (3) Each of the persons listed in subsection (9)(a) to (d) below has authority to initiate an application or appeal that may be made by the patient under section 50(1), 99(1), 100(2), 120(2), 125(2), 126(2), 163(1), 164(2), [^{F2}164A,] 192(2), 201(1), 204(1), 214(2), 219(2), 220(2), 264(2), 268(2), 320(2), 321(1) or 322(2) of this Act.
- (4) Each of the persons listed in subsection (9)(a) and (b) below has authority to obtain any notice or information that is to be provided under section 54(3), 60(1), 87(2)(c), 124(4) or (6), 127(7), 128(3), 129(3) or (4), 153(2)(c), 200(3), 218(4), (6) or (10)(b), 224(8), 225(3) or 226(3) of this Act.
- (5) The reference in subsection (3) above to section 264(2), 268(2), 320(2), 321(1) or 322(2) of this Act does not apply in relation to a guardian or a welfare attorney of

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the patient (as that person is already entitled to make an application or appeal under that section).

- (6) In the application of subsection (4) above—
- (a) the reference to section 87(2)(c) or 153(2)(c) relates only to notice of the determination mentioned in that section (and not also to a copy of the record mentioned in that section),
 - (b) the reference to section 128(3) or 129(4) relates to a responsible medical officer's reasons only if that officer is satisfied that it is appropriate to give notice of them to a guardian or a welfare attorney of the patient (having regard to the need to ensure the patient's wellbeing and confidentiality).
- (7) Neither of the persons listed in subsection (9)(c) or (d) below has authority to act in relation to a patient by virtue of this section if the patient has made a written declaration precluding the person (or all persons) from so acting.
- (8) Subsections (2) to (5) and (7) of section 250 of this Act apply to a declaration mentioned in subsection (7) above as they apply to a nomination to which subsection (1) of that section relates (with that section to be read accordingly).
- (9) The listed persons are—
- (a) any guardian of the patient,
 - (b) any welfare attorney of the patient,
 - (c) the patient's primary carer (if any),
 - (d) the patient's nearest relative.]

Textual Amendments

- F1** S. 257A and cross-heading inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 25(2), 61(2)**; S.S.I. 2017/197, art. 2, sch.
- F2** Word in s. 257A(3) inserted (30.11.2020) by [Management of Offenders \(Scotland\) Act 2019 \(asp 14\)](#), **ss. 26(6), 63(2)**; S.S.I. 2020/245, reg. 2, sch. (with reg. 3)

Modifications etc. (not altering text)

- C1** S. 257A(5) excluded by [S.S.I. 2005/467](#) regs. 14(4), 15(3) (as inserted (30.6.2017) by [The Mental Health \(Cross-border transfer patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Amendment Regulations 2017 \(S.S.I. 2017/229\)](#), **regs. 2, 18(4), 19(3)** (with reg. 4(1)))
- C2** S. 257A(5) excluded by [S.S.I. 2008/356](#), **reg. 9(4)** (as inserted (30.6.2017) by [The Mental Health \(Cross-border transfer: patients subject to requirements other than detention\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/232\)](#), regs. 1. 9(1))

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)