



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

2003 asp 13

PART 18

MISCELLANEOUS

Advance statements

275 Advance statements: making and withdrawal

- (1) An “advance statement” is a statement complying with subsection (2) below and specifying—
 - (a) the ways the person making it wishes to be treated for mental disorder;
 - (b) the ways the person wishes not to be so treated,in the event of the person’s becoming mentally disordered and the person’s ability to make decisions about the matters referred to in paragraphs (a) and (b) above being, because of that, significantly impaired.
- (2) An advance statement complies with this subsection if—
 - (a) at the time of making it, the person has the capacity of properly intending the wishes specified in it;
 - (b) it is in writing;
 - (c) it is subscribed by the person making it;
 - (d) that person’s subscription of it is witnessed by a person (the “witness”) who is within the class of persons prescribed by regulations for the purposes of this paragraph and who signs the statement as a witness to that subscription; and
 - (e) the witness certifies in writing on the document which comprises the statement that, in the witness’s opinion, the person making the statement has the capacity referred to in paragraph (a) above.
- (3) An advance statement may be withdrawn by the person who made it by a withdrawal complying with this subsection; and a withdrawal so complies if—
 - (a) at the time of making it the person has the capacity properly to intend to withdraw the statement; and

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- (b) it is made by means of a document which, were it an advance statement, would comply with paragraphs (b) to (e) of subsection (2) above.

Commencement Information

- I1** S. 275 in force at 1.9.2004 for specified purposes by [S.S.I. 2004/367, art. 2, Sch. 1](#)
I2 S. 275 in force at 4.10.2004 in so far as not already in force by [S.S.I. 2004/367, art. 3, Sch. 2](#)

276 Advance statements: effect

- (1) If the Tribunal is satisfied as to the matters set out in subsection (2) below, it shall, in making any decision in respect of a patient who is a person who has made and not withdrawn an advance statement, have regard to the wishes specified in the statement.
- (2) Those matters are—
- (a) that, because of mental disorder, the ability of the person who made the advance statement to make decisions about the matters referred to in paragraphs (a) and (b) of subsection (1) of section 275 of this Act is significantly impaired;
 - (b) that the statement complies with subsection (2) of that section;
 - (c) that any measures or treatment which might or will be authorised by virtue of the decision referred to in subsection (1) above or might or will, by virtue of that decision, no longer be authorised correspond to any wishes specified in the statement; and
 - (d) that, since the person made the statement, there has been no change of circumstances which, were the person to have been considering making the statement at the time the Tribunal is making the decision referred to in subsection (1) above, would have been likely to cause the person not to make the statement or to make a substantially different one.
- (3) A person giving medical treatment authorised by virtue of this Act or the 1995 Act to a patient who is a person—
- (a) who has made and not withdrawn an advance statement; and
 - (b) whose ability to make decisions about the matters referred to in paragraphs (a) and (b) of subsection (1) of section 275 of this Act is, because of mental disorder, significantly impaired,
- shall have regard to the wishes specified in the advance statement.
- (4) Before making a decision under section 236(2)(c), 239(1)(c) or 241(1)(c) of this Act in relation to a patient who is a person who has made and not withdrawn an advance statement, a designated medical practitioner shall have regard to the wishes specified in the statement.
- (5) For the purposes of subsections (1) and (2) above and (in the case where medical treatment is to or might be given to a patient otherwise than by virtue of any such decision as is referred to in subsection (1) above or is to be given to the patient by virtue of such a decision which was made in ignorance of the existence or the withdrawal of an advance statement) of subsections (3) and (4) above—
- (a) an advance statement shall be taken to comply with subsection (2) of section 275 of this Act; and

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- (b) a withdrawal of an advance statement shall be taken to comply with subsection (3) of that section,
unless the contrary appears.
- (6) For the purposes of subsections (3) and (4) above in the case where the medical treatment is authorised by virtue of a decision such as is referred to in subsection (1) above—
- (a) an advance statement shall be taken to comply with subsection (2) of section 275 of this Act; and
- (b) a withdrawal of an advance statement shall be taken to comply with subsection (3) of that section,
if the Tribunal was satisfied when making the decision that the statement or, as the case may be, the withdrawal so complies.
- (7) If, in respect of a patient who is a person who has made and not withdrawn an advance statement—
- (a) the Tribunal makes such a decision as is referred to in subsection (1) above authorising measures which conflict with the wishes specified in the statement;
- (b) a person having functions under this Act gives medical treatment authorised by virtue of this Act or the 1995 Act to the person and that treatment conflicts with those wishes;
- (c) a designated medical practitioner makes such a decision as is referred to in subsection (4) above and it conflicts with those wishes; or
- (d) such measures, treatment or decision which could have been so authorised, given or, as the case may be, made are not so authorised or is not so given or made, with the consequence that there is a conflict with those wishes,
then the Tribunal, person having those functions or, as the case may be, designated medical practitioner shall comply with the requirements set out in subsection (8) below.
- (8) Those requirements are—
- (a) recording in writing the circumstances in which those measures were or treatment or decision was authorised, given or made or, as the case may be, not authorised, given or made, and the reasons why;
- (b) supplying—
- (i) the person who made the statement;
 - (ii) that person's named person;
 - (iii) that person's welfare attorney;
 - (iv) that person's guardian; and
 - (v) the Commission,
- with a copy of that record; and
- (c) placing a copy of that record with that person's medical records.

Commencement Information

I3 S. 276 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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[^{F1}276A Advance statements to be put with medical records

- (1) Subsection (2) below applies where a Health Board receives a copy of an advance statement, or a copy of a document withdrawing an advance statement, from—
 - (a) the person who made the statement, or
 - (b) any individual acting with the person's authority in relation to the statement.
- (2) The Health Board must—
 - (a) place a copy of the statement or document with the person's medical records, and
 - (b) inform the Commission—
 - (i) that a copy of the statement or document is held with the person's medical records, and
 - (ii) of the premises at which the medical records are kept (and the personal and administrative details essential for identifying the records as the person's).

Textual Amendments

F1 Ss. 276A-276C inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 26(2)**, 61(2); [S.S.I. 2017/197, art. 2, sch.](#)

276B Advance statements to be registered by the Commission

- (1) Where the Commission receives information by virtue of section 276A(2) of this Act, the Commission must enter the information in a register of advance statements maintained by it (and mark the date on which the entry is made).
- (2) The Commission must allow an entry in the register to be inspected at a reasonable time—
 - (a) by the person whose medical records are referred to in the entry,
 - (b) with respect to treatment of the person for mental disorder, by any individual acting on the person's behalf,
 - (c) for the purpose of making decisions or taking steps with respect to the treatment of the person for a mental disorder, by—
 - (i) a mental health officer dealing with the person's case,
 - (ii) the person's responsible medical officer,
 - (iii) the Health Board responsible for the person's treatment.

Textual Amendments

F1 Ss. 276A-276C inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 26(2)**, 61(2); [S.S.I. 2017/197, art. 2, sch.](#)

276C Publicising support for making advance statements

- (1) A Health Board is to publicise any support that it offers for—
 - (a) making or withdrawing an advance statement,

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- (b) sending a copy of an advance statement, or a copy of a document withdrawing an advance statement, to a Health Board.
- (2) A Health Board must give the Commission such information as the Commission may from time to time seek on what the Health Board is doing in order to comply with subsection (1) above.]

Textual Amendments

F1 Ss. 276A-276C inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 26(2), 61(2)**; [S.S.I. 2017/197](#), art. 2, sch.

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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\(3\)](#)