

*This Scottish Statutory Instrument has been made in consequence of a defect in S.S.I. 2004/388 and is being issued free of charge to all known recipients of that Scottish Statutory Instrument.*

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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 430**

**MENTAL HEALTH**

**The Mental Health (Patient Representation) (Prescribed Persons) (Scotland) (No. 2) Regulations 2004**

<i>Made</i> - - - -	<i>30th September 2004</i>
<i>Laid before the Scottish Parliament</i>	<i>1st October 2004</i>
<i>Coming into force</i> - -	<i>4th October 2004</i>

The Scottish Ministers, in exercise of the powers conferred by section 250(2), (4) and (7) and section 253(2), (5) and (6) of the Mental Health (Care and Treatment) (Scotland) Act 2003(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Mental Health (Patient Representation) (Prescribed Persons) (Scotland) (No. 2) Regulations 2004 and shall come into force on 4th October 2004.

(2) In these Regulations—

“care service” has the meaning given by subsection (1)(a), (b), (e), (g), (h) and (k) of section 2 of the Regulation of Care (Scotland) Act 2001(b); and

“social worker” has the meaning given by section 77(1) of that Act.

**Prescribed persons**

2. The following class is prescribed for the purposes of sections 250(7) and 253(6) of the Mental Health (Care and Treatment) (Scotland) Act 2003—

- (a) clinical psychologists entered on the British Psychological Society’s register of chartered psychologists;
- (b) medical practitioners;
- (c) occupational therapists registered with the Health Professions Council;
- (d) persons employed in the provision of (or in managing the provision of) a care service;
- (e) registered nurses;
- (f) social workers; and
- (g) solicitors.

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(a) 2003 asp 13; see section 329 for the definition of “regulations”.  
(b) 2001 asp 8.

**Revocation**

3. The Mental Health (Patient Representation) (Prescribed Persons) (Scotland) Regulations 2004(a) are hereby revoked.

St Andrew's House,  
Edinburgh  
30th September 2004

*MALCOLM CHISHOLM*  
A member of the Scottish Executive

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(a) S.S.I. 2004/388.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations replace (with amendment to the coming into force date) the Mental Health (Patient Representation) (Prescribed Persons) (Scotland) Regulations 2004 (S.S.I. 2004/388) which are revoked by these Regulations (regulation 3). The content of the Regulations is identical in all other respects.

The Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Act”) makes provision for the nomination of “named persons”. Any nomination must be witnessed and certified by a “prescribed person”. Section 250(7) provides that “prescribed person” means a person of a class prescribed by regulations. These Regulations prescribe that class (regulation 2).

Section 250(4) of the Act makes provision for revocation of such nominations; which, again, must be witnessed and certified by prescribed persons.

Section 253 makes provision for declarations in relation to named persons. Such declarations set out persons whom the declarer does not wish to be their named person. The declaration can then be used to determine the person’s wishes in circumstances where that person becomes incapable. Declarations can be revoked. Any declaration or revocation must be witnessed and certified by a prescribed person. Section 253(6) provides that “prescribed person” has the same meaning as in section 250 of the Act.

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