



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

## 2003 asp 13

### PART 17

#### PATIENT REPRESENTATION ETC.

### CHAPTER 1

#### NAMED PERSON

#### *Meaning of “named person”*

#### **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; <sup>[F1]</sup>or civil partner
  - (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.

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*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Section 254 is up to date with all changes known to be in force on or before 30 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (3) If the relevant person’s spouse<sup>F2</sup> or civil partner]—
- (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.
- (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 <sup>F3</sup>civil partners]; 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>F4</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>F5</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>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].

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### Textual Amendments

- F1** Words in s. 254(2)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 69(2)**; [S.S.I. 2005/604](#), art. 2(c)
- F2** Words in s. 254(3) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 69(3)**; [S.S.I. 2005/604](#), art. 2(c)
- F3** Words in s. 254(7)(a)(ii) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), **Sch. 28 para. 69(4)**; [S.S.I. 2005/604](#), art. 2(c)
- F4** 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)**
- F5** 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)**
- F6** 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)**
- F7** 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

- I1** 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)

**Changes to legislation:**

Mental Health (Care and Treatment) (Scotland) Act 2003, Section 254 is up to date with all changes known to be in force on or before 30 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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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\(3\)](#)