

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part One – the 2003 Act

Section 22: Named person not to be automatic

70. Chapter 1 of Part 17 of the 2003 Act makes provision for the appointment and duties of named persons. Under section 250 of the 2003 Act, a person who is 16 years or over is entitled to nominate another person, over the age of 16 to act as a named person. A named person has a similar role to that of a safeguarder and represents the interests of the patient, but does not necessarily represent the patient. The named person should be involved in discussions about care options for the patient and may take part in any legal proceedings relating to compulsory measures.
71. At present, if an adult has not appointed a named person then in the absence of a declaration to the contrary, the person's primary carer becomes the named person, or the person's nearest relative where there is no primary carer by virtue of section 251 of the 2003 Act. An individual can decline to be a named person, and a person can make a declaration that a particular person or persons shall not be a named person. The Tribunal also has the authority to appoint a named person in certain cases under section 257.

Amendment to [section 251](#), [253](#) and [318](#)

72. [Section 22](#) repeals section 251 and 253 so that the carer or relative does not become a named person by virtue of those sections if the patient does not nominate a named person. Therefore a patient aged 16 or over will only have a named person if they choose one. A consequential amendment is made to section 318 and to the definition of named person in section 329 of the 2003 Act.