



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

2003 asp 13

PART 17

PATIENT REPRESENTATION ETC.

CHAPTER 1

NAMED PERSON

Meaning of “named person”

250 Nomination of named person

- (1) Where a person who has attained the age of 16 years (a “nominator”) nominates in accordance with subsection (2) below another person who has attained that age to be the nominator’s named person, that person is, subject to subsections [F¹(2A), (3) and (6)] below, the nominator’s named person.
 - (2) A person is nominated in accordance with this subsection if—
 - (a) the nomination is signed by the nominator;
 - (b) the nominator’s signature is witnessed by a prescribed person;
 - (c) the prescribed person certifies that, in the opinion of the prescribed person, the nominator—
 - (i) understands the effect of nominating a person to be the nominator’s named person; and
 - (ii) has not been subjected to any undue influence in making the nomination.
- [F²(2A) A nomination under subsection (1) above is valid only if—
- (a) a docket to the nomination states that the person nominated has consented to the nomination,
 - (b) the docket is signed by the nominated person, and

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- (c) the nominated person's signature is witnessed by a prescribed person.]
- (3) A nomination under subsection (1) above may be revoked by the nominator in accordance with subsection (4) below.
- (4) The nomination of a named person is revoked in accordance with this subsection if—
- (a) the revocation is signed by the nominator;
 - (b) the nominator's signature is witnessed by a prescribed person;
 - (c) the prescribed person certifies that, in the opinion of the prescribed person, the nominator—
 - (i) understands the effect of revoking the appointment of a person as named person; and
 - (ii) has not been subjected to any undue influence in making the revocation.
- (5) The nomination of a named person shall be effective notwithstanding the nominator's becoming, after making the nomination, incapable.
- (6) A person nominated under subsection (1) above [^{F3}ceases] to be the nominator's named person by giving notice to—
- (a) the nominator; and
 - (b) the local authority for the area in which the nominator resides, to that effect.
- (7) In this section—
- “incapable” means incapable by reason of mental disorder or of inability to communicate because of physical disability; but a person shall not fall within this definition by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise); and
- “prescribed person” means a person of a class prescribed by regulations.

Textual Amendments

- F1** Words in s. 250(1) substituted (5.5.2017 for specified purposes, 30.6.2017 for specified purposes) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 23(2)(a)**, 61(2); S.S.I. 2017/126, art. 2, sch.; S.S.I. 2017/197, art. 2, sch. (with art. 16(a))
- F2** S. 250(2A) inserted (5.5.2017 for specified purposes, 30.6.2017 for specified purposes) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 23(2)(b)**, 61(2); S.S.I. 2017/126, art. 2, sch.; S.S.I. 2017/197, art. 2, sch. (with art. 16(a))
- F3** Word in s. 250(6) substituted (5.5.2017 for specified purposes, 30.6.2017 for specified purposes) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 23(2)(c)**, 61(2); S.S.I. 2017/126, art. 2, sch.; S.S.I. 2017/197, art. 2, sch. (with art. 16(a))

Modifications etc. (not altering text)

- C1** S. 250(2)(3)-(5)(7) applied by S.S.I. 2008/356, reg. 8A(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. 2, 8)
- C2** S. 250(2)(3)-(5)(7) applied by S.S.I. 2005/467, reg. 13A(4) (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, 16 (with reg. 4(1)))

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Commencement Information

- I1** S. 250 in force at 1.9.2004 for specified purposes by [S.S.I. 2004/367, art. 2, Sch. 1](#)
- I2** S. 250 in force at 4.10.2004 in so far as not already in force by [S.S.I. 2004/367, art. 3, Sch. 2](#)

^{F4}251 Named person where no person nominated or nominated person declines to act

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Textual Amendments

- F4** S. 251 repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 22\(2\), 61\(2\); S.S.I. 2017/197, art. 2, sch.](#) (with arts. 13-15)

252 Named person in relation to child

- (1) The named person of a person who has not attained the age of 16 years (“the child”) shall be—
 - (a) subject to subsection (2) below, in a case where [^{F5}a relevant person] has parental rights and parental responsibilities in relation to the child, that person;
 - (b) in a case where the child is in the care of a local authority by virtue of a care order made under section 31 of the Children Act 1989 (c. 41), that authority; or
 - (c) in any other case, where the child’s primary carer has attained the age of 16 years, that person.
- (2) Subject to subsection (3) below, where two or more [^{F6}relevant persons] have parental rights and parental responsibilities in relation to the child, the named person of the child shall be—
 - (a) if those persons agree that one of them is to be the named person of the child, that person; or
 - (b) if those persons do not so agree, the one of them—
 - (i) who provides, on a regular basis, all, or most, of the care for, and support to, the child;
 - (ii) in a case where the child is in hospital, who provided all, or most, of that care for, and support to, the child before the child was admitted to hospital.
- (3) If—
 - (a) one of the [^{F7}relevant] persons who has parental rights and parental responsibilities in relation to the child is a local authority; and
 - (b) the local authority has those rights and responsibilities by virtue of an order under section 86(1) of the Children (Scotland) Act 1995 (c. 36) (orders transferring parental rights and parental responsibilities),the local authority shall be the child’s named person.
- (4) In this section—

“parental responsibilities”, in relation to a child, has the meaning given by section 1(3) of the Children (Scotland) Act 1995 (c. 36); ^{F8}...

“parental rights”, in relation to a child, has the meaning given by section 2(4) of that Act.

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[^{F9}; and

“relevant person” means–

- (a) a local authority; or
- (b) a person who has attained the age of 16 years.]

Textual Amendments

- F5** Words in s. 252(1)(a) substituted (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(20)(a)**
- F6** Words in s. 252(2) substituted (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(20)(b)**
- F7** Word in s. 252(3) 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(20)(c)**
- F8** Word in s. 252(4) omitted (27.9.2005) by virtue of [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(20)(d)(i)**
- F9** Words in s. 252(4) 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(20)(d)(ii)**

Commencement Information

- I3** S. 252 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)

^{F10}253 Declaration in relation to named person

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Textual Amendments

- F10** [S. 253](#) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 22(2)**, 61(2); [S.S.I. 2017/197](#), art. 2, **sch.** (with arts. 13-15)

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; [^{F11}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;

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- (i) the relevant person’s niece or nephew;
 - (j) the person mentioned in subsection (8) below.
- (3) If the relevant person’s spouse^{F12} 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 ^{F13}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^{F14} or in a care home service], had been living with the relevant person for such period when the relevant person was admitted to hospital^{F15} 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^{F16} or in a care home service], had been living with the relevant person for such period when the relevant person was admitted to hospital^{F17} or to a care home service].

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Textual Amendments

- F11** 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)
- F12** 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)
- F13** 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)
- F14** 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)**
- F15** 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)**
- F16** 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)**
- F17** 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

- I4** 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)

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