

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part One – the 2003 Act

Section 26: Advance statements to be registered

New sections 276A, 276B and 276C

79. An advance statement is a statement which may be made by a person at any time provided the person making the statement has capacity to make such a statement. The statement must be in writing and witnessed. The advance statement should set out how a person wishes to be treated for mental disorder and the ways in which a person wishes not to be so treated. Section 275 and 276 of the 2003 Act make provision for advance statements.
80. Section 26 of the Act inserts sections 276A, 276B and 276C to the 2003 Act. Section 276A requires health boards to place a copy of any statement or document withdrawing a statement, with the person's medical records and send certain information to the Commission. This information is that a copy of the statement, or a document withdrawing the statement, is held with the person's medical records; the premises at which the medical records are kept; and personal and administrative details essential for identifying the records as the person's.
81. Section 276B places a duty on the Commission, on receipt of this information relating to an advance statement or a document withdrawing the statement, to enter this information in a register to be maintained by the Commission, and make a note of the date on which the entry is made. It also details who may inspect the register (at a reasonable time): namely the person who made the advance statement and whose medical records are mentioned in the entry; with respect to treatment for a mental disorder, any individual acting on the person's behalf; and for the purposes of making decisions or taking steps with respect to the treatment of the person for mental disorder – a mental health officer dealing with the person's case, the person's responsible medical officer, or the relevant health board responsible for the person's treatment.
82. Section 276C introduces a duty on Health Boards to publicise any support offered by the Health Board for making or withdrawing an advance statement and for sending copies of advance statements or documents withdrawing advance statements to a Health Board, and to give information to the Mental Welfare Commission, on request, as to how it has complied with this duty.