

**2017 No. 175**

**MENTAL HEALTH**

**The Mental Health (Patient Representation) (Prescribed Persons) (Scotland) Regulations 2017**

<i>Made</i> - - - -	<i>30th May 2017</i>
<i>Laid before the Scottish Parliament</i>	<i>1st June 2017</i>
<i>Coming into force</i> - -	<i>30th June 2017</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 250(2), (2A), (4) and (7) and 326(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003(a) and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Mental Health (Patient Representation) (Prescribed Persons) (Scotland) Regulations 2017 and come into force on 30th June 2017.

**Interpretation**

2. In these Regulations—

“care service” has the meaning given by subsection (1)(a), (b), (d), (f), (g) and (j) of section 47 of the Public Services Reform (Scotland) Act 2010(b);

“Health and Care Professions Council” means the Council established by article 3 of the Health and Social Work Professions Order 2002(c);

“independent advocacy services” has the same meaning as in section 259(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003(d);

“social worker” has the meaning given by section 77 of the Regulation of Care (Scotland) Act 2001(e); and

“the 2004 Regulations” means the Mental Health (Patient Representation) (Prescribed Persons) (Scotland) (No. 2) Regulations 2004(f).

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(a) 2003 asp 13 (“the 2003 Act”). Subsection (2A) of section 250 was inserted by section 23(2)(b) of the Mental Health (Scotland) Act 2015 (asp 9, “the 2015 Act”). See section 329 for the definition of “regulations”.

(b) 2010 asp 8.

(c) S.I. 2002/254 (“the 2002 Order”). Article 3 was relevantly amended by section 214 of the Health and Social Care Act 2012 (2012 c.7). That section provided that the body then known as the Health Professions Council was to continue in existence and be renamed as the Health and Care Professions Council; subsection (2) substituted a new article 3(1) into the 2002 Order to refer to the Council by its new name.

(d) For the purposes of section 259(1), “advocacy services” has the meaning given by subsection (4) of section 259, and “independent” has the meaning given by subsection (5) of that section.

(e) 2001 asp 8. Section 77 was substituted by paragraph 9 of schedule 1 of the Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 (S.S.I. 2011/211). There are amendments to section 77 which are not relevant to these Regulations.

(f) S.S.I. 2004/430.

### **Prescribed person**

**3.**—(1) The following classes of person are prescribed for the purposes of section 250(7)(a) of the Mental Health (Care and Treatment) (Scotland) Act 2003:—

- (a) persons providing independent advocacy services;
- (b) medical practitioners;
- (c) arts therapists, dieticians, occupational therapists, physiotherapists, practitioner psychologists and speech and language therapists;
- (d) persons employed in the provision of, or managing the provision of, a care service;
- (e) registered nurses;
- (f) social workers; and
- (g) solicitors.

(2) The classes of person mentioned in paragraph (1)(c) are prescribed only if they are registered with the Health and Care Professions Council.

### **Revocation**

**4.** The 2004 Regulations are revoked.

### **Saving provision**

**5.** The provision made by regulation 4 has no effect on the validity of any document which was witnessed, or any certification given, before 30th June 2017, in accordance with section 250 or 253(b) of the Mental Health (Care and Treatment) (Scotland) Act 2003, by a person of a class prescribed by the 2004 Regulations.

*MAUREEN WATT*

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
30th May 2017

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(a) Relevant provisions of section 250 of the 2003 Act are applied to declarations mentioned in section 257A(7) of that Act by subsection (8) of that section. Section 257A was inserted by section 25(2) of the 2015 Act.

(b) Section 253 was repealed by section 22 of the 2015 Act, subject to saving provisions.

## EXPLANATORY NOTE

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

These Regulations prescribe classes of persons for the purposes of section 250(7) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”).

The 2003 Act, as amended by the Mental Health (Scotland) Act 2015 (“the 2015 Act”), makes provision for the nomination of “named persons” (section 250(1)). Any nomination must be witnessed and certified by a “prescribed person” (section 250(2)). To be valid, the person nominated must consent to the nomination and their consent must be witnessed by a “prescribed person” (section 250(2A)).

The 2003 Act, as amended, also makes provision to enable certain persons (“listed initiators”) to initiate certain applications or appeals under that Act, where the patient does not have capacity to do so (section 257A). The patient can, however, make a declaration that they do not wish a person or persons to act as listed initiator by virtue of being their primary carer or nearest relative (section 257A(7)), and that declaration must be witnessed and certified by a “prescribed person” (section 250(2), as applied by section 257A(8)).

A nomination or declaration may be revoked by the person who made it, and the revocation must also be witnessed and certified by a prescribed person (section 250(3) and (4), as read with section 257A(8)).

Section 250(7) provides that “prescribed person” means a person of a class prescribed by regulations. This applies for the purposes of sections 250 and 257A (by virtue of section 257A(8)). These Regulations prescribe classes of person for those purposes (regulation 3).

These Regulations revoke the Mental Health (Patient Representation) (Prescribed Persons) (Scotland) (No. 2) Regulations 2004 (“the 2004 regulations”). The 2004 regulations prescribed classes of person for the purposes of nominations and revocations made in accordance with section 250 of the 2003 Act, as well as for the purposes of declarations made in accordance with section 253 of the 2003 Act. Declarations under section 253 were for the purpose of allowing a person to declare that they did not wish a person or persons to be their named person; this was because the person might otherwise be their named person by virtue of section 251. Sections 251 and 253 of the 2003 Act are revoked by section 22 of the 2015 Act subject to saving provisions.

These Regulations include a saving provision to ensure that any document which was witnessed or certified by a prescribed person in accordance with section 250 or 253 of the 2003 Act before the date on which these Regulations come into force is not rendered invalid as a consequence of the revocation of the 2004 regulations.

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