



## SCOTTISH EXECUTIVE

Health Department  
Directorate of Service Policy and Planning

Dear Colleague

### MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

#### **– IMPLEMENTATION OF PROVISIONS IN RELATION TO ADVANCE STATEMENTS AND NAMED PERSONS (SECTIONS 250, 253 AND 275)**

This letter informs NHS Boards and local authorities of the implementation of two areas of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) with effect from 4 October 2004. It will be of interest to all health and allied professionals, Mental Health Officers, care workers and support workers providing services to users of mental health services and their carers.

#### **Advance Statements**

Section 275 (advance statements: making and withdrawal) of the 2003 Act came fully into effect on 4 October 2004. This means that advance statements can now be made. An advance statement is a written statement setting out how a person would wish to be treated, or wish not to be treated, for mental disorder in circumstances where they become mentally disordered and their ability to make decisions about that treatment becomes significantly impaired.

An advance statement must be signed by the person making it and witnessed by a person prescribed by regulations under section 275(2)(d) of the 2003 Act. That person must certify in writing on the advance statement that in his or her opinion the person making the statement has the capacity of properly intending the wishes specified in it.

When the remainder of the provisions of the 2003 Act are implemented, the Mental Health Tribunal, designated medical practitioners and other persons giving treatment under the 2003 Act or the [Criminal Procedure \(Scotland\) Act 1995](#) (“the 95 Act”) must have regard to the wishes specified in any advance statement made by the patient.

**1<sup>st</sup> November 2004**

#### **Addresses**

##### For action

Chief Executives, Health Boards  
Chief Executives, Local Authorities  
Directors of Social Work/Chief Social  
Work Officers  
General Manager, State Hospitals  
Board for Scotland  
Scottish Secretary, British Medical  
Association  
Royal College of General  
Practitioners, Scottish Division  
Royal College of Psychiatrists,  
Scottish Division  
Royal College of Nursing, Scottish  
Division  
British Psychological Society,  
Scottish Division  
Scottish Board, College of  
Occupational Therapists  
Scottish Social Services Council  
Scottish Commission for the  
Regulation of Care  
Law Society of Scotland

##### For information

Secretary, Mental Welfare  
Commission for Scotland  
Director, Scottish Association for  
Mental Health  
President, National Schizophrenia  
Fellowship, Scotland  
Director, Advocacy Safeguards  
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Director, Scottish Independent  
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## **Named Persons**

The 2003 Act creates a new role – the “named person” – who has particular powers and rights in relation to persons receiving treatment under the 1995 Act or the 2003 Act. The relevant sections of the 2003 Act are sections 250 and 253, and they come fully into effect on 4 October 2004. Persons of age 16 or over can make nominations (nominating a named person) and declarations (declaring that a specified person is not to be their named person) under sections 250 and 253 respectively.

In the event of a person not making a nomination, section 251 of the 2003 Act provides for their primary carer, or their nearest relative, to be their named person. A child under 16 may not nominate a named person and the 2003 Act makes specific provision as to who shall be a child’s named person.

The nomination must be signed by the person making the nomination (“the nominator”). The nominator’s signature must be witnessed by a person prescribed by regulations under section 250(7) of the 2003 Act. That person must certify that, in their opinion, the person making the nomination understands its effect and has not been subjected to any undue influence. Declarations are made in the same way and the person making the declaration is known as “the declarer”.

When the remainder of the provisions of the 2003 Act are implemented, the named person will have certain rights to be informed and consulted about the care of the nominator.

### **Witnessing an advance statement or a named person nomination/declaration (section 250(7) – nominations; section 253(6) – declarations; section 275(d) – advance statements)**

The following persons have been prescribed in regulations as being able to witness (a) advance statements and (b) nominations/declarations in relation to named persons:

- clinical psychologists entered on the British Psychological Society’s register of chartered psychologists;
- medical practitioners;
- occupational therapists registered with the Health Professions Council;
- persons employed in the provision of (or in managing the provision of) a care service;
- registered nurses;
- social workers; and
- solicitors.

In these regulations, “care service” has the meaning given by subsection (1)(a), (b), (e), (g), (h) and (k) of section 2 of the [Regulation of Care \(Scotland\) Act 2001](#); and “social worker” has the meaning given by section 77(1) of that Act.

The above description provides a summary only. Full details can be found in the 2003 Act and in the regulations themselves which are:

[The Mental Health \(Advance Statements\) \(Prescribed Class of Persons\) \(Scotland\) \(No.2\) Regulations 2004](#); and

[The Mental Health \(Patient Representation\) \(Prescribed Persons\) \(Scotland\) \(No.2\) Regulations 2004](#).

This notice should be brought to the attention of all people working with users of mental health services and their carers.

Copies of the 2003 Act and the Regulations may be purchased from The Stationery Office ([http://www.hmso.gov.uk/services/obtaining\\_pubs.htm](http://www.hmso.gov.uk/services/obtaining_pubs.htm)) or accessed on the HMSO website at <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/about.htm>.

Further guidance on advance statements and the role of the named person is available in:

- the draft Code of Practice on the 2003 Act; and
- guides published by the Scottish Executive: [A guide to Named Persons](#) and [A guide to Advance Statements](#).

The documents are accessible on the Scottish Executive website or paper copies may be obtained by e-mailing: [mentalhealthlaw@scotland.gsi.gov.uk](mailto:mentalhealthlaw@scotland.gsi.gov.uk).

Yours sincerely

**IAN GORDON**

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