

Mental Health Law in Scotland

A Guide to Named Persons



Scottish Government
Riaghaltas na h-Alba
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NAMED PERSON

A named person is someone who can look after your interests if you are cared for or treated under mental health legislation.

This guide is one of a series of guides produced by the Scottish Government to provide information to you on mental health law in Scotland. We provide information to help you understand your rights.

This guide refers to the role of named person as set out in the main piece of mental health law in Scotland. This is the Mental Health (Care and Treatment) (Scotland) Act 2003. We refer to it as 'the law' throughout this guide. You do not need to understand anything about law in order to use this guide.

The phrase 'named person' has also been used in other laws. For clarity, the named person role in relation to services for children set out in the Children and Young People (Scotland) Act 2014 is a different role and is not covered by this guide.

In this guide, we refer to the Mental Health Tribunal for Scotland (MHTS) as 'the Tribunal'. However, from 2019, the Mental Health Chamber of the First Tier Tribunal will adopt the role of the Tribunal and reference to the Tribunal should be interpreted accordingly.

We have taken account of changes that have been made to mental health law in Scotland up to October 2018.

1. An Overview of the Named Person Role

A named person is someone who can look after your interests when you are subject to the compulsory powers under the law (for example compulsory treatment or detention in hospital). You will have a named person only if you choose to nominate one (unless you are under the age of 16 – see section 2). This is an opportunity for you to have an additional voice to represent and safeguard your interests.

Your named person has similar rights to you at the Tribunal. They can apply and appeal to the Tribunal and can appear and be represented at Tribunal hearings. This includes hearings about your care and treatment. Your named person is also entitled to be given information concerning any compulsory measures which have been taken or are being asked for, where this is provided for by the law.

The Tribunal is an independent body which makes decisions about applications for compulsory care and treatment.

Your named person can put forward their views about your care or treatment and has a right to have their views taken account of by anyone acting under the law (for example a doctor, psychiatrist, nurse, or social worker).

The role of your named person is to represent and safeguard your interests. Your named person may be able to help you exercise your rights. They can help to set out your past and present wishes and feelings. They can help you to be involved in, and understand, decisions about your care and treatment.

At times your views might be different to your named person's views. You don't always have to agree with each other and you can both do what you think is right. It is important that you and your named person know that you can both act independently of each other.

Although your named person is acting to represent and safeguard your interests and feelings, they don't have to agree with you if they feel it is not the best way forward. For example, your named person can decide whether to make an application to the Tribunal on your behalf without waiting for you to ask them to do it.

If you no longer wish to have a named person, you can cancel (revoke) your nomination. This means that you will no longer have a named person unless you nominate someone else (see section 6).

Your named person is able to:

- be involved in discussions about care options for you;
- be consulted when certain things happen – for example, when a short-term detention or an application for a compulsory treatment order (CTO) is being considered;
- be notified when certain changes to your circumstances happen, for example if your short-term detention is revoked;

- receive copies of certain records or information which are given to you;
- make applications or appeals to the Tribunal, receive documents and speak and give or lead evidence at a hearing;
- agree to two medical examinations taking place at the same time, if you are not capable of consenting; and
- ask for an assessment of your needs from the local authority and/or Health Board.

However, if you can't choose a named person (because you do not have the capacity to make this decision), information on other safeguards as well as information on the rights of certain people to act for you is provided in section 2. Section 2 also provides information on safeguards that are available whether you have a named person or not.

Your mental health officer (MHO) has a duty to find out who your named person is, if you have one. Your mental health officer (MHO) is also responsible for providing information and advice about your rights, which includes information on the role of a named person and how to make arrangements for having a named person. Your mental health officer (MHO) will be able to discuss with you any of the information in this leaflet.

2. Choosing a Named Person

Adults (aged 16 or over)

You will only have a named person if you choose to have one and you're able to nominate someone yourself. You don't have to have one and no one can choose one for you.

You can only have one named person at a time. You can change your named person or decide to revoke (cancel) your named person at any time (see section 6).

Anyone aged 16 or over can be your named person providing that person is, and continues to be, capable of taking on this role. You can choose anyone at all to be your named person, such as your carer, spouse, nearest relative, or another mental health service user, as long as they agree to do it and they know what is involved. Your nomination for a named person needs to be signed and witnessed properly (see section 6).

Your named person should not be someone who has any professional responsibility for providing your care, for example your GP, responsible medical officer (RMO), mental health officer (MHO) or community psychiatric nurse (CPN). This is because your named person must be able to make decisions independently about what they think is in your best interests, and this might be in conflict with what your care team think.

You should be confident that your named person will be able to make important decisions about your care and treatment if you are not able to do so for yourself. They may have the role for a long time and so it is important that you think carefully about whether you would like someone to be your named person and who you would like that to be. You should feel comfortable with your named person being able to receive personal and sensitive care and treatment information and paperwork.

You should also be able to trust that your named person will not share any of your personal information and records with anyone else and will treat your information with respect.

Your named person must be an individual and cannot be an organisation (such as a company or a charity) or a group of people.

There is no single record of all named persons in Scotland. The information about your named person is usually kept with your medical records but other people, for example your mental health officer (MHO) should have a record of who your named person is. Anyone who is responsible for your care and treatment will need to know if you have chosen a named person or have changed your named person.

You can ask for a copy of the information about your named person to be filed with your medical records. If you have a named person you should tell your:

- responsible medical officer (doctor);
- general practitioner (GP);

- mental health officer (MHO);
- community psychiatric nurse;
- solicitor;
- independent advocate (if you have one); or
- any other person close to you.

Your named person might be able to help you do this. You may also want to make sure your carers and relatives know as well. You should keep a list of the names and contact details of the people who have been told who your named person is. If you decide to make any changes to your named person you will also need to make sure that everyone who is involved in your care knows.

If you have decided that you want to nominate someone as your named person, or that you want to change your existing named person, then there is more detailed information on how to do this in sections 5 and 6 of this guide.

If you're 16 years old or over, you can choose a named person if you want to have one. The choice is yours. You should choose someone who will act in your best interests, is trustworthy, and who agrees to do it. At any time you can change your named person or decide that you no longer want to have one.

Children (aged under 16)

You cannot choose your named person. Your named person will be either:

- a parent or person who has parental rights and responsibilities for you, as long as they are at least 16 years old;
- the local authority, if you are being looked after under a care order under the Children Act 1989; or
- in all other cases your primary carer, as long as they are 16 years old or more.

You can apply to the Tribunal if you believe that the person who is your named person should not be (see section 8 on finding further information and advice). Other people, such as a parent, guardian or relative can also apply to the Tribunal. If the Tribunal agrees with you then it can appoint another named person for you.

Once you reach the age of 16, you will only have a named person if you have capacity to make this decision and wish to have one. Your chosen named person would also need to agree to this (see section 5). If you reach the age of 16 and you're not able to choose your own named person then you will not have one.

If you're under 16 years old, you will automatically have a named person. Once you reach 16 then you will only have a named person if you choose to have one.

3. If you don't have a named person (people aged 16 and over only)

Where you have the ability (capacity) to choose a named person but do not want one then you will not have one. Nobody can appoint a named person for you.

However, the law says that if you do not have a named person then certain people are able to act on your behalf as a 'listed initiator'. This is only where you do not have the ability (capacity) to make decisions about making an application or appeal to the Tribunal.

A listed initiator may only act on your behalf in a limited way; they may only make an application or appeal to the Tribunal on your behalf.

The following people can act on your behalf as a listed initiator:

- your guardian;
- your welfare attorney;
- your primary carer; or
- your nearest relative.

A listed initiator will not automatically receive your personal information or medical records. **This is different from a named person.** However, a listed initiator can obtain any information or notice which they need to be able to make the application or appeal to the Tribunal.

If you do not want this to happen then you can make a written declaration to say that you do not want a particular person or persons to be able to act as a listed initiator on your behalf (see section 7).

A form for making a declaration stopping people acting as a listed initiator can be downloaded from the forms section at www.gov.scot/mentalhealthlaw but your hospital or local council may have their own version of the form which they could provide you with (also, see section 8 for sources of further information and advice).

If you don't have a named person, and do not have the capacity to make an application or appeal to the Tribunal, then certain people involved in your care and welfare can make an application or appeal to the Tribunal on your behalf. When they do this they are known as a listed initiator. You can prevent this from happening if you want to.

Additional protections for people with or without a named person

As a main protection, the law ensures that your wishes and feelings are taken into account when a decision or action is taken about your care and treatment by certain people. This happens whether or not you have a named person. The law also ensures that the views of your named person, carer, guardian or welfare attorney are taken into account, if you have any of these.

This means that your mental health officer (MHO) and responsible medical officer (RMO) need to take your views, as well as those of your named person, carer, guardian or welfare attorney (if you have one), into account when making decisions about your care and treatment.

Advance statements and independent advocacy provide other ways that can help people involved in your care to understand and take into account your past and present wishes and feelings. An advance statement is a written statement which sets out a person's preferences for their care and treatment for their mental disorder, in case they do not have the ability to make decisions about this in the future. Anyone who makes decisions about your care and treatment must take into account the preferences in your advance statement. This includes your mental health officer (MHO), responsible medical officer (RMO) and the Tribunal.

Independent advocacy can provide a way to support you to express your needs and thoughts to people who are making decisions about your care and treatment. An independent advocate cannot make decisions on your behalf, but will help you to get the information that you may need to make choices about your circumstances and will also support you to put your views across to others. An independent advocate may also speak on your behalf if you would like this. Anyone being treated for a mental disorder under the law has a right of access to independent advocacy.

For further information and advice about advance statements and independent advocacy please discuss this with your mental health officer (MHO) or responsible medical officer (RMO), or contact the Mental Welfare Commission for Scotland (see contact details at section 9).

If you can't arrange your own solicitor because you do not have capacity to make this decision, a legal representative (known as a curator ad litem) will be appointed for you by the Tribunal. The curator ad litem will represent your interests to the Tribunal, including at Tribunal hearings, and will be provided with information about you so that they can do this.

The Tribunal can also decide to take views from or share documents with people who have an interest in your care and treatment, for example a member of your family or a friend. The Tribunal can only do this if it is satisfied that it is the right thing to do and it will have regard to providing the maximum benefit to you as the patient.

The Tribunal can decide to involve people with an interest in your care or treatment and who wish to be further involved by making them a formal part of any proceedings where you are the patient. This means that they can receive important documents relating to your case (including documents that contain personal information about you) and offer any views.

4. The Powers of the Tribunal in relation to your Named Person

The Tribunal can order that your named person is no longer your named person if it decides that the named person you have chosen is unsuitable or is inappropriate to act in this role. This might be because they are not safeguarding your interests properly or they are bullying you. It may be for other reasons also. The Tribunal will take account of your wishes, but it has the power to make whatever decision it thinks is fit.

Other people can also apply to the Tribunal to have your named person removed from the role if they are thought to be inappropriate. These people include:

- your mental health officer (MHO);
- your responsible medical officer (RMO);
- if you are in hospital, the managers of the hospital;
- your welfare attorney, if you have one;
- your guardian, if you have one;
- your relatives; or
- anyone who has an interest in your welfare.

If you are aged under 16, an application to remove a named person can also be made by someone who has parental responsibilities for you. The Tribunal can appoint another named person if it decides to remove your current named person from the role and that other person agrees.

If you are aged 16 or over the Tribunal cannot appoint a new named person for you, you must choose your own named person if you want to have one. If you're not able to choose your own named person then you will not have one.

The Tribunal can remove your named person if it thinks that it is inappropriate for your named person to have that role. It cannot appoint a new named person for you (unless you are aged under 16).

5. Making a Nomination

Once your chosen person has agreed to be your named person, your nomination must be made in writing. This must include a part which clearly states that your chosen person has agreed to be your named person – this part is known as a ‘docket’.

Your nomination must be signed by you in front of a witness. The same witness must also sign and date the nomination itself. Only certain people can be a witness (see section 6). Your witness must be able to confirm that you understand what choosing and having a named person means and that you haven’t been put under undue pressure by anyone to nominate a named person.

As your chosen person must agree to the nomination, your chosen person must sign the docket part of your nomination in front of a witness. The witness must also sign and date the docket.

The same person can be used to witness your signature and that of your chosen person’s.

Your nomination will still be lawful even if you later become unable to make decisions. It is best practice to arrange for your nomination to be kept in a suitable place (see section 2).

You can cancel (revoke) your nomination at any time (see section 6).

A form for making a nomination can be downloaded from the forms section at www.gov.scot/mentalhealthlaw but your hospital or local council may have their own version of the form which they can provide you with.

Before you ask anyone to help you nominate your named person, or act as your witness, you should check if it will cost you anything. Some people you ask for help might need to charge you for their working time. If you ask a solicitor you should ask them whether legal aid will be available to pay for some or all of the cost (legal aid is the help you can sometimes get when you can’t afford to pay your own legal costs).

6. Cancelling (Revoking) a Nomination

If you change your mind about your named person you can cancel (revoke) your nomination as long as you have capacity to make that decision. You might change your mind because your named person has moved away or you think someone else would be better in this role.

You can revoke your nomination at any time. To revoke your nomination it must be in writing and signed by you in front of a witness. Your witness needs to confirm that you understand what it means to not have a named person and that you haven't been put under undue pressure by anyone to make this decision. Your witness will also need to sign and date your revocation (see section 7).

If the person can no longer act for you, you should revoke their nomination and consider whether you want to nominate anyone else. Until you nominate someone else you will not have a named person.

A form for revoking a nomination can be downloaded from the forms section at www.gov.scot/mentalhealthlaw but your hospital or local council may have their own version of the form which they can provide you with.

A named person can also decide that they no longer want to be your named person (see section 9 on how to find further information and advice).

7. Witnesses

The person who acts as your witness must confirm that in their opinion you understand what the decision you are making means, and that you have made your decision freely, without undue pressure from anyone else.

People who can act as a witness are:

- people providing independent advocacy services;
- medical practitioners such as doctors and GPs;
- arts therapists, dieticians, occupational therapists, physiotherapists, practitioner psychologists and speech and language therapists (if registered with the Health and Care Professions Council);
- people employed in the provision of, or managing the provision of, a care service;
- registered nurses;
- social workers; and
- solicitors.

It would be a conflict of interest for the person named in any of the documents (such as your chosen person) to also witness them. However, your chosen person could help you find another suitable witness instead. You cannot witness your own documents, even if you are also fall into one of the categories above. You must also be in front of your witness at the time of signing so that they can see you sign your name.

A witnesses is needed so that your nomination, revocation or declaration about listed initiators is lawful.

If you want to (1) nominate a named person, (2) revoke the nomination of your named person, or (3) make a declaration about who can't act as a listed initiator, then you must do this in writing and it must be signed and witnessed. Forms are available at www.gov.scot/mentalhealthlaw (in the forms section) but your hospital or local council may have their own version of the form.

Before you ask anyone to help you nominate your named person, or act as your witness, you should check if it will cost you anything. Some people you ask for help might need to charge you for their working time. If you ask a solicitor you should ask them whether legal aid with will be available to pay for some or all of the cost (legal aid is the help you can sometimes get when you can't afford to pay your own legal costs).

8. Using Other Languages, and Difficulties with Eyesight or Writing

If you want to write your nomination, revocation or declaration in a language other than English you can ask for interpretation and translation assistance from your Health Board, your local authority, or both. By law they have to provide support to you for this.

If you are unable to write or have problems with your eyesight, you can still make a nomination, revocation or declaration (see section 9 on how to find further information and advice).

9. Finding Further Information, Advice and Support

The Mental Welfare Commission for Scotland protects and promotes the human rights of people with mental illness, learning disability, dementia and related conditions. The Mental Welfare Commission for Scotland has an advice line which you can call to speak to someone to help you to understand more about mental health law, what this means for you and your rights: 0800 389 6809.

The Mental Welfare Commission's website www.mwscot.org.uk/contact-us/ provides information and advice.

There are a number of sources of advice available to you, including your mental health officer (MHO), independent advocacy, solicitors and the Mental Welfare Commission for Scotland. If you are making a decision about whether you want to have a named person and who your named person should be you might want to speak to other people to get advice before doing so. The decision is yours and you should not feel pressured into making it.

You do not have to have a named person if you do not want to but having one that acts in your best interests can be helpful to you.

Under the law anyone with a mental disorder has the right to access independent advocacy services, whether or not they are receiving compulsory treatment. An independent advocate can help and support you to express your own views about your care, treatment and welfare. However, an independent advocate cannot make any decisions on your behalf, like a named person can.

An independent advocate can come with you to a Tribunal hearing to support you but does not have the same rights as a named person so cannot receive information about you from the Tribunal or provide their own views to the Tribunal. An independent advocate does not act as your legal representative.

You can have both an independent advocate and a named person if you want to.

This guide, along with other guides in the series, have been produced by the Scottish Government. If you have any queries about what you have read in this guide then you should speak to your independent advocate, solicitor, care team or the Mental Welfare Commission for Scotland.



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