

*These notes relate to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) which received Royal Assent on 25 April 2003*

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 17 – Patient Representation**

##### *Chapter 2: Advocacy*

##### **Advocacy**

##### *Section 259: advocacy*

499. **Section 259(1)** confers on every patient a right of access to independent advocacy.
500. It places a duty on each local authority and health board to ensure the provision of independent advocacy services to patients within their areas. The duty requires local authorities and health boards to collaborate with each other. Where local authority and health board boundaries are not the same, each health board must collaborate with each local authority in its area and vice versa (see subsections (2) and (3)).
501. Subsection (1) also requires each local authority and health board to take steps to ensure that patients in its area have the opportunity of making use of the independent advocacy services provided.
502. “Advocacy services” is defined in subsection (4) as “services of support and representation made available for the purpose of enabling the person to whom they are available to have as much control of, or capacity to influence, that person’s care and welfare as is, in the circumstances, appropriate”. Such services are considered to be independent for these purposes where they are provided other than by someone mentioned in the list set out in subsection (5).
503. In addition, subsection (7) requires the State Hospitals Board for Scotland to secure independent advocacy services for patients detained in a state hospital, and to take steps to enable those patients to use the services.
504. Subsection (8) deals with the situation of a patient who, having been detained in a state hospital by virtue of section 127 or 193(7), is no longer detained there. In this case, a duty lies with the State Hospitals Board for Scotland along with the local authority and Health Board in whose area such a patient resides, to secure the availability of independent advocacy services.