**The Mental Health (Care & Treatment) Act (Scotland) 2003**

**Section 259** Any person affected by a mental disorder (mental illness, learning disability or personality disorder, however caused or manifested) has a **right** of access to independent advocacy.

Local Authorities and Health Boards have a **duty** to ensure fully independent advocacy services are available to such persons.

Those responsible for the care of such person have a **duty** to enable access to independent advocacy for that person.

The MHA 2003 was written after some years of extensive public and professional consultation through the Millan Committee, commissioned by the Scottish Parliament in 1997. It was not an update on previous legislation but a complete re-write and was based on the principles of Human Rights and Equalities legislation.

The act itself and the code of practice by which all parties are governed is based on the following ten principles, which arose out of the consultations. Where previous mental health legislation had provide “one size fits all” approaches, the new act is focused on the needs and rights of the individual, and grants new rights, including those of **Advance Statements, Named Persons** and the right to **Independent Advocacy.** (This was the first Act in Europe to legislate for and define independent advocacy).

The Ten Principles

1. **INCLUSION –** Take your past and present wishes into account. You should be given all the information and support you need to take part in decisions which affect you.
2. **CARERS –** Those who care for you should be given the right information and support.
3. **INFORMAL CARE –** All forms of support should be considered where they meet your individual needs, in both the short and long term
4. **BENEFIT –** Any treatment given to you must be to your own maximum benefit
5. **RECIPROCITY –** The removal of your freedom must be balanced by treatment that is to your benefit.
6. **NON DISCRIMINATION –** People involved in your treatment should take into account who you are, your abilities, your beliefs and your background and ethnic identity.
7. **LEAST RESTRICTIVE OPTION –** Your freedom should not be restricted any more than is necessary to keep you safe.
8. **EQUALITY –** You should not lose access to your other rights because you are being treated under mental health law
9. **CARERS’ VIEWS –** Carers should be consulted about your care, as long as you consent. Your right to confidentiality should be protected.
10. **CHILD WELFARE –** The welfare of children involved in mental health matters should be prioritised, including access to services specially designed for children.

The Principles apply to formal and informal care, and the right to advocacy, Advance Statements and Named Persons apply to all of us, at any time.

An **ADVANCE STATEMENT** is a legal document stating how you wish to treated if you are compulsorily detained. It must be taken into account, but if it is over-ridden, the decision and reason must be entered into the medical notes and communicated to the Mental Welfare Commission.

A **NAMED PERSON** is a person you nominate to have all access to information pertaining to your circumstances and whom you trust to express their views about your care and treatment, but *only while you are compulsorily detained.*

In addition, mental health tribunals replaced the previous Sheriff Court jurisdiction over detention and compulsory treatment. The Mental Health Tribunal Scotland Office was established, and tribunals are heard by a panel of three, including a legal, medical and lay member. The Tribunal hears applications for the detention of persons, reviews and appeals against those orders (eg STDO –Short term detention 28 days , CTO – Compulsory Treatment Order – 6 months).

The Mental Welfare Commission had its powers enhanced to police the Act.