



Mental Health (Care and Treatment) (Scotland) Act 2003

2003 asp 13

PART 17

PATIENT REPRESENTATION ETC.

CHAPTER 3

DETENTION IN CONDITIONS OF EXCESSIVE SECURITY

Other hospitals

268 Detention in conditions of excessive security: hospitals other than state hospitals

- (1) This section applies where a ^{F1}... patient's detention in a qualifying hospital is authorised by—
- (a) a compulsory treatment order;
 - (b) a compulsion order;
 - (c) a hospital direction; or
 - (d) a transfer for treatment direction;
- and whether or not a certificate under section 127(1) (either as enacted or as applied by section 179(1) of this Act) or 224(2) of this Act has effect in relation to the patient.
- (2) On the application of any of the persons mentioned in subsection (6) below, the Tribunal may, if satisfied that [^{F2}the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient], make an order—
- (a) declaring that the patient is being detained in conditions of excessive security; and
 - (b) specifying a period, not exceeding 3 months and beginning with the making of the order, during which the duties under subsections (3) to (5) below shall be performed.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Other hospitals is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (3) Where the Tribunal makes an order under subsection (2) above in respect of a relevant patient, the relevant Health Board shall identify a hospital—
- (a) which is not a state hospital;
 - (b) which the Board and the Scottish Ministers, and its managers if they are not the Board, agree is a hospital in which the patient could be detained in conditions that would not involve the patient being subject to a level of security that is excessive in the patient's case; and
 - (c) in which accommodation is available for the patient.
- (4) Where the Tribunal makes an order under subsection (2) above in respect of a patient who is not a relevant patient, the relevant Health Board shall identify a hospital—
- (a) which is not a state hospital;
 - (b) which the Board considers, and its managers if they are not the Board agree, is a hospital in which the patient could be detained in conditions that would not involve the patient being subject to a level of security that is excessive in the patient's case; and
 - (c) in which accommodation is available for the patient.
- (5) Where the Tribunal makes an order under subsection (2) above in respect of a patient, the relevant Health Board shall, as soon as practicable after identifying a hospital under subsection (3) or, as the case may be, (4) above, give notice [^{F3}of the name of the hospital so identified to the managers of the hospital in which the patient is detained].
- (6) The persons referred to in subsection (2) above are—
- (a) the ^{F4}... patient;
 - (b) the ^{F4}... patient's named person;
 - (c) any guardian of the ^{F4}... patient;
 - (d) any welfare attorney of the ^{F4}... patient; and
 - (e) the Commission.
- (7) An application may not be made under subsection (2) above—
- (a) if the compulsory treatment order that authorises the patient's detention in hospital has not been extended;
 - (b) during the period of 6 months beginning with the making of the compulsion order that authorises the patient's detention in hospital; or
 - (c) before the expiry of the period of 6 months beginning with the making of—
 - (i) the hospital direction; or
 - (ii) the transfer for treatment direction,
 that authorises the patient's detention in hospital.
- [^{F5}(7A) An application may not be made under subsection (2) above unless it is accompanied by a report prepared by [^{F6}an approved medical] practitioner which—
- (a) states that in the practitioner's opinion the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient, and
 - (b) sets out the practitioner's reasons for being of that opinion.]
- (8) No more than one application may be made under subsection (2) above in respect of the same patient—
- (a) during the period of 12 months beginning with the day on which the order, or direction, authorising the patient's detention in hospital is made;

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- (b) during any subsequent period of 12 months that begins with, or with an anniversary of, the expiry of the period mentioned in paragraph (a) above.
- (9) Before determining an application under subsection (2) above, the Tribunal shall—
- (a) afford the persons mentioned in subsection (10) below the opportunity—
 - (i) of making representations (whether orally or in writing); and
 - (ii) of leading, or producing, evidence; and
 - (b) whether or not any such representations are made, hold a hearing.
- (10) Those persons are—
- (a) the ^{F7} ... patient;
 - (b) the ^{F7} ... patient's named person;
 - (c) the relevant Health Board;
 - (d) the ^{F7} ... patient's responsible medical officer;
 - (e) the managers of the [^{F8}hospital in which the patient is detained];
 - (f) the mental health officer;
 - (g) any guardian of the ^{F9} ... patient;
 - (h) any welfare attorney of the ^{F9} ... patient;
 - (i) any curator *ad litem* appointed by the Tribunal in respect of the ^{F9} ... patient;
 - (j) the Commission;
 - (k) in the case of a relevant patient, the Scottish Ministers; and
 - (l) any other person appearing to the Tribunal to have an interest in the application.

^{F10}(11)

^{F10}(12)

^{F10}(13)

^{F10}(14)

Textual Amendments

- F1** Word in s. 268(1) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(a)**, 61(2); S.S.I. 2015/361, art. 2
- F2** Words in s. 268(2) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(b)**, 61(2); S.S.I. 2015/361, art. 2
- F3** Words in s. 268(5) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(c)**, 61(2); S.S.I. 2015/361, art. 2
- F4** Word in s. 268(6) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(d)**, 61(2); S.S.I. 2015/361, art. 2
- F5** S. 268(7A) inserted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 14(3)**, 61(2); S.S.I. 2015/361, art. 2 (with arts. 3, 6)
- F6** Words in s. 268(7A) substituted (16.11.2015) by [The Mental Health \(Detention in Conditions of Excessive Security\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/364\)](#), regs. 1, **3(b)**
- F7** Word in s. 268(10)(a)-(d) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(e)(i)**, 61(2); S.S.I. 2015/361, art. 2
- F8** Words in s. 268(10)(e) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(e)(ii)**, 61(2); S.S.I. 2015/361, art. 2
- F9** Word in s. 268(10)(f)-(l) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(e)(i)**, 61(2); S.S.I. 2015/361, art. 2

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F10 S. 268(11)-(14) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 16\(2\)\(f\), 61\(2\); S.S.I. 2015/361, art. 2](#)

Commencement Information

- I1** Part 17 Chapter 3 (ss. 264 - 273) in force 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)
- I2** S. 268 in force at 6.1.2006 for specified purposes by [S.S.I. 2005/161, art. 4, Sch. 2](#)
- I3** S. 268 in force at 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)

269 Order under section 268: further provision

- (1) This section applies where—
- (a) an order is made under section 268(2) of this Act in respect of a ^{F11}... patient; and
 - (b) the order is not recalled under section 271 of this Act;
- and whether or not a certificate under section 127(1) (either as enacted or as applied by section 179(1) of this Act) or 224(2) of this Act has effect in relation to the patient.
- (2) If the relevant Health Board fails, during the period specified in the order, to give notice to the Tribunal that the ^{F11}... patient has been transferred to another hospital, there shall be a hearing before the Tribunal.
- (3) Where such a hearing is held, the Tribunal may, if satisfied that [^{F12}the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient], make an order—
- (a) declaring that the patient is being detained in conditions of excessive security; and
 - (b) specifying—
 - (i) a period of 28 days; or
 - (ii) such longer period not exceeding 3 months as the Tribunal thinks fit, beginning with the day on which the order is made during which the duties under subsections (4) to (6) below shall be performed.
- (4) Where the Tribunal makes an order under subsection (3) above in respect of a relevant patient, the relevant Health Board shall identify a hospital—
- (a) which is not a state hospital;
 - (b) which the Board and the Scottish Ministers, and its managers if they are not the Board, agree is a hospital in which the patient could be detained in conditions that would not involve the patient being subject to a level of security that is excessive in the patient's case; and
 - (c) in which accommodation is available for the patient.
- (5) Where the Tribunal makes an order under subsection (3) above in respect of a patient who is not a relevant patient, the relevant Health Board shall identify a hospital—
- (a) which is not a state hospital;
 - (b) which the Board considers, and its managers if they are not the Board agree, is a hospital in which the patient could be detained in conditions that would not involve the patient being subject to a level of security that is excessive in the patient's case; and
 - (c) in which accommodation is available for the patient.

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- (6) Where the Tribunal makes an order under subsection (3) above in respect of a patient, the relevant Health Board shall, as soon as practicable after identifying a hospital under subsection (4) or, as the case may be, (5) above, give notice [^{F13}of the name of the hospital so identified to the managers of the hospital in which the patient is detained].
- (7) Before making an order under subsection (3) above, the Tribunal shall afford the persons mentioned in section 268(10) of this Act the opportunity—
- (a) of making representations (whether orally or in writing); and
 - (b) of leading, or producing, evidence.

Textual Amendments

- F11** Word in s. 269(1)(2) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 16\(3\)\(a\), 61\(2\); S.S.I. 2015/361, art. 2](#)
- F12** Words in s. 269(3) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 16\(3\)\(b\), 61\(2\); S.S.I. 2015/361, art. 2](#)
- F13** Words in s. 269(6) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 16\(3\)\(c\), 61\(2\); S.S.I. 2015/361, art. 2](#)
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Commencement Information

- I4** Part 17 Chapter 3 (ss. 264 - 273) in force 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)
- I5** S. 269 in force at 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)

^{F14}270 Order under section 269: further provision

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Textual Amendments

- F14** S. 270 repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 15\(5\), 61\(2\); S.S.I. 2015/361, art. 2 \(with arts. 4-6\)](#)

271 [^{F15}Order under section 268 or 269: recall]

- (1) This section applies where an order is made under section 268(2) [^{F16}or 269(3)] of this Act in respect of a ^{F17}... patient.
- (2) On the application of any of the persons mentioned in subsection (4) below, the Tribunal—
- (a) shall, if satisfied that [^{F18}the test specified in regulations made under section 271A(2) of this Act is not met in relation to the patient], recall the order;
 - (b) may, on any other grounds, recall the order.
- (3) Where the order is recalled, the relevant Health Board ceases to be subject to the duties under section 268(3) to (5) [^{F19}or 269(4) to (6)] to which it became subject by virtue of the making of the order.
- (4) The persons referred to in subsection (2) above are—

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- (a) the relevant Health Board;
 - (b) in the case of a relevant patient, the Scottish Ministers;
 - (c) in the case of a patient who is not a relevant patient, the patient’s responsible medical officer.
- (5) Before determining an application under subsection (2) above, the Tribunal shall—
- (a) afford the persons mentioned in section 268(10) of this Act the opportunity—
 - (i) of making representations (whether orally or in writing); and
 - (ii) of leading, or producing, evidence; and
 - (b) whether or not any such representations are made, hold a hearing.

Textual Amendments

- F15** S. 271 title substituted (16.11.2015) by virtue of [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 15(7), 61(2)**; [S.S.I. 2015/361, art. 2](#) (with arts. 4-6)
- F16** Words in s. 271(1) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 15(6)(a), 61(2)**; [S.S.I. 2015/361, art. 2](#) (with arts. 4-6)
- F17** Word in s. 271(1) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(4)(a), 61(2)**; [S.S.I. 2015/361, art. 2](#)
- F18** Words in s. 271(2)(a) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(4)(b), 61(2)**; [S.S.I. 2015/361, art. 2](#)
- F19** Words in s. 271(3) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 15(6)(b), 61(2)**; [S.S.I. 2015/361, art. 2](#) (with arts. 4-6)

Commencement Information

- I6** Part 17 Chapter 3 (ss. 264 - 273) in force 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)
- I7** S. 271 in force at 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)