



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

## 2003 asp 13

### PART 17

#### PATIENT REPRESENTATION ETC.

### CHAPTER 3

#### DETENTION IN CONDITIONS OF EXCESSIVE SECURITY

##### *State hospitals*

#### **264 Detention in conditions of excessive security: state hospitals**

- (1) This section applies where a patient's detention in a state 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 the patient does not require to be detained under conditions of special security that can be provided only in a state hospital, 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.

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- (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 appropriate conditions; 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 appropriate conditions; 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 to the managers of the state hospital of the name of the hospital so identified.
- (6) The persons referred to in subsection (2) above are—
- (a) the patient;
  - (b) the patient’s named person;
  - (c) any guardian of the patient;
  - (d) any welfare attorney of the 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.
- (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;
  - (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—

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- (a) the patient;
- (b) the patient's named person;
- (c) the relevant Health Board;
- (d) the patient's responsible medical officer;
- (e) the managers of the state hospital in which the patient is detained;
- (f) the mental health officer;
- (g) any guardian of the patient;
- (h) any welfare attorney of the patient;
- (i) any curator *ad litem* appointed by the Tribunal in respect of the 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.

## **265 Order under section 264: further provision**

- (1) This section applies where—
  - (a) an order is made under section 264(2) of this Act in respect of a patient; and
  - (b) the order is not recalled under section 267 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 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 the patient does not require to be detained under conditions of special security that can be provided only in a state hospital, 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 appropriate conditions; 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 appropriate conditions; and

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- (c) in which accommodation is available for the patient.
- (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 to the managers of the state hospital of the name of the hospital so identified.
- (7) Before making an order under subsection (3) above, the Tribunal shall afford the persons mentioned in section 264(10) of this Act the opportunity—
  - (a) of making representations (whether orally or in writing); and
  - (b) of leading, or producing, evidence.

## **266 Order under section 265: further provision**

- (1) This section applies where—
  - (a) an order is made under subsection (3) of section 265 of this Act in respect of a patient;
  - (b) the order specifies the period mentioned in paragraph (b)(ii) of that subsection; and
  - (c) the order is not recalled under section 267 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 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 the patient does not require to be detained under conditions of special security that can be provided only in a state hospital, make an order—
  - (a) declaring that the patient is being detained in conditions of excessive security; and
  - (b) specifying the period of 28 days 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 appropriate conditions; 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 appropriate conditions; 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 to the managers of the state hospital of the name of the hospital so identified.
- (7) Before making an order under subsection (3) above, the Tribunal shall afford the persons mentioned in section 264(10) of this Act the opportunity—
  - (a) of making representations (whether orally or in writing); and
  - (b) of leading, or producing, evidence.

#### **267 Orders under sections 264 to 266: recall**

- (1) This section applies where an order is made under section 264(2), 265(3) or 266(3) of this Act in respect of a patient.
- (2) On the application of any of the persons mentioned in subsection (4) below, the Tribunal—
  - (a) shall, if satisfied that the patient requires to be detained under conditions of special security that can be provided only in a state hospital, 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 264(3) to (5), 265(4) to (6) or 266(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—
  - (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 264(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.

#### *Other hospitals*

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

- (1) This section applies where a qualifying 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 detention of the qualifying patient in the qualifying hospital involves the patient being subject to a level of security that is excessive in the patient's case, 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.
- (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 to the managers of the qualifying hospital of the name of the hospital so identified.
- (6) The persons referred to in subsection (2) above are—
- (a) the qualifying patient;
  - (b) the qualifying patient's named person;
  - (c) any guardian of the qualifying patient;
  - (d) any welfare attorney of the qualifying 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.

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- (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;
  - (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 qualifying patient;
  - (b) the qualifying patient’s named person;
  - (c) the relevant Health Board;
  - (d) the qualifying patient’s responsible medical officer;
  - (e) the managers of the qualifying hospital;
  - (f) the mental health officer;
  - (g) any guardian of the qualifying patient;
  - (h) any welfare attorney of the qualifying patient;
  - (i) any curator *ad litem* appointed by the Tribunal in respect of the qualifying 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.
- (11) A patient is a “qualifying patient” for the purposes of this section and sections 269 to 271 of this Act if the patient is of a description specified in regulations.
- (12) A hospital is a “qualifying hospital” for the purposes of this section and sections 269 to 271 of this Act if—
- (a) it is not a state hospital; and
  - (b) it is specified, or of a description specified, in regulations.
- (13) Regulations under subsection (11) or (12) above may in particular have the effect—
- (a) that “qualifying patient” means a patient;
  - (b) that “qualifying hospital” means—
    - (i) a hospital other than a state hospital; or
    - (ii) a part of a hospital.
- (14) Regulations may make provision as to when for the purposes of this section and sections 269 to 271 of this Act a patient’s detention in a hospital is to be taken as involving the patient being subject to a level of security that is excessive in the patient’s case.

**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 qualifying 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 qualifying 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 detention of the patient in the qualifying hospital involves the patient being subject to a level of security that is excessive in the patient's case, 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.
- (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 to the managers of the qualifying hospital of the name of the hospital so identified.
- (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.

## **270 Order under section 269: further provision**

- (1) This section applies where—
  - (a) an order is made under subsection (3) of section 269 of this Act in respect of a qualifying patient;
  - (b) the order specifies the period mentioned in paragraph (b)(ii) of that subsection; and
  - (c) 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 qualifying 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 detention of the patient in the qualifying hospital involves the patient being subject to a level of security that is excessive in the patient's case, make an order—
  - (a) declaring that the patient is being detained in conditions of excessive security; and
  - (b) specifying the period of 28 days 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.
- (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 to the managers of the qualifying hospital of the name of the hospital so identified.
- (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.

**271 Orders under sections 268 to 270: recall**

- (1) This section applies where an order is made under section 268(2), 269(3) or 270(3) of this Act in respect of a qualifying patient.
- (2) On the application of any of the persons mentioned in subsection (4) below, the Tribunal—
  - (a) shall, if satisfied that detention of the patient in the qualifying hospital does not involve the patient being subject to a level of security that is excessive in the patient’s case, 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), 269(4) to (6) or 270(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—
  - (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.

*Enforcement: civil proceedings***272 Proceedings for specific performance of statutory duty**

- (1) The duties imposed by virtue of—
  - (a) an order under section 264(2) of this Act;
  - (b) an order under subsection (3) of section 265 of this Act which specifies the period mentioned in paragraph (b)(ii) of that subsection;
  - (c) an order under section 268(2) of this Act; or
  - (d) an order under subsection (3) of section 269 of this Act which specifies the period mentioned in paragraph (b)(ii) of that subsection,
 shall not be enforceable by proceedings for specific performance of a statutory duty under section 45(b) of the Court of Session Act 1988 (c. 36).
- (2) Without prejudice to the rights of any other person, the duties imposed by virtue of—
  - (a) an order under subsection (3) of section 265 of this Act which specifies the period mentioned in paragraph (b)(i) of that subsection;
  - (b) an order under section 266(3) of this Act;
  - (c) an order under subsection (3) of section 269 of this Act which specifies the period mentioned in paragraph (b)(i) of that subsection; or
  - (d) an order under section 270(3) of this Act,
 shall be enforceable by proceedings by the Commission for specific performance of a statutory duty under section 45(b) of that Act of 1988.

### *Interpretation of Chapter*

#### **273 Interpretation of Chapter**

In this Chapter—

“relevant Health Board” means, in relation to a patient of such description as may be specified in regulations, the Health Board, or Special Health Board—

- (a) of such description as may be so specified; or
- (b) determined under such regulations; and

“relevant patient” means—

- (a) in sections 264 to 267 of this Act—
  - (i) a patient whose detention in hospital is authorised by a compulsion order and who is also subject to a restriction order; or
  - (ii) a patient whose detention in hospital is authorised by a hospital direction or a transfer for treatment direction;
- (b) in sections 268 to 271 of this Act—
  - (i) a qualifying patient whose detention in hospital is authorised by a compulsion order and who is also subject to a restriction order; or
  - (ii) a qualifying patient whose detention in hospital is authorised by a hospital direction or a transfer for treatment direction.