



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

## 2003 asp 13

### PART 17

#### PATIENT REPRESENTATION ETC.

### CHAPTER 1

#### NAMED PERSON

#### *Meaning of “named person”*

#### **250 Nomination of named person**

- (1) Where a person who has attained the age of 16 years (a “nominator”) nominates in accordance with subsection (2) below another person who has attained that age to be the nominator’s named person, that person is, subject to subsections (3) and (6) below, the nominator’s named person.
- (2) A person is nominated in accordance with this subsection if—
  - (a) the nomination is signed by the nominator;
  - (b) the nominator’s signature is witnessed by a prescribed person;
  - (c) the prescribed person certifies that, in the opinion of the prescribed person, the nominator—
    - (i) understands the effect of nominating a person to be the nominator’s named person; and
    - (ii) has not been subjected to any undue influence in making the nomination.
- (3) A nomination under subsection (1) above may be revoked by the nominator in accordance with subsection (4) below.
- (4) The nomination of a named person is revoked in accordance with this subsection if—
  - (a) the revocation is signed by the nominator;

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- (b) the nominator’s signature is witnessed by a prescribed person;
  - (c) the prescribed person certifies that, in the opinion of the prescribed person, the nominator—
    - (i) understands the effect of revoking the appointment of a person as named person; and
    - (ii) has not been subjected to any undue influence in making the revocation.
- (5) The nomination of a named person shall be effective notwithstanding the nominator’s becoming, after making the nomination, incapable.
- (6) A person nominated under subsection (1) above may decline to be the nominator’s named person by giving notice to—
- (a) the nominator; and
  - (b) the local authority for the area in which the nominator resides, to that effect.
- (7) In this section—
- “incapable” means incapable by reason of mental disorder or of inability to communicate because of physical disability; but a person shall not fall within this definition by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise); and
- “prescribed person” means a person of a class prescribed by regulations.

## **251 Named person where no person nominated or nominated person declines to act**

- (1) Subject to subsections (2) to (5) below, where, in the case of a person who has attained the age of 16 years, there is no person who is by virtue of section 250 of this Act the person’s named person, the person’s primary carer shall, unless the person’s primary carer has not attained the age of 16 years, be the person’s named person.
- (2) Where a person’s primary carer has not attained the age of 16 years, but the person has a carer who has attained that age, that carer shall be the person’s named person.
- (3) Where—
- (a) a person does not have a primary carer; or
  - (b) a person’s primary carer has not attained the age of 16 years,
- but the person has two or more carers who have attained the age of 16 years, those carers may agree which of them is to be the named person of the person.
- (4) Where, by virtue of subsection (2) or (3) above, a carer is a person’s named person, the references in subsections (5) and (6) below to a person’s primary carer shall be construed as references to that carer.
- (5) If—
- (a) the person has no primary carer; or
  - (b) the person’s primary carer declines in accordance with subsection (6) below to be the person’s named person,
- the person’s nearest relative shall be the person’s named person.
- (6) A person’s primary carer declines in accordance with this subsection to be the person’s named person by giving notice to—

- (a) the person; and
  - (b) the local authority for the area in which the person resides,
- to that effect.

## **252 Named person in relation to child**

- (1) The named person of a person who has not attained the age of 16 years (“the child”) shall be—
- (a) subject to subsection (2) below, in a case where a person who has attained the age of 16 years has parental rights and parental responsibilities in relation to the child, that person;
  - (b) in a case where the child is in the care of a local authority by virtue of a care order made under section 31 of the Children Act 1989 (c. 41), that authority; or
  - (c) in any other case, where the child’s primary carer has attained the age of 16 years, that person.
- (2) Subject to subsection (3) below, where two or more persons who have attained the age of 16 years have parental rights and parental responsibilities in relation to the child, the named person of the child shall be—
- (a) if those persons agree that one of them is to be the named person of the child, that person; or
  - (b) if those persons do not so agree, the one of them—
    - (i) who provides, on a regular basis, all, or most, of the care for, and support to, the child;
    - (ii) in a case where the child is in hospital, who provided all, or most, of that care for, and support to, the child before the child was admitted to hospital.
- (3) If—
- (a) one of the persons who has parental rights and parental responsibilities in relation to the child is a local authority; and
  - (b) the local authority has those rights and responsibilities by virtue of an order under section 86(1) of the Children (Scotland) Act 1995 (c. 36) (orders transferring parental rights and parental responsibilities),
- the local authority shall be the child’s named person.
- (4) In this section—
- “parental responsibilities”, in relation to a child, has the meaning given by section 1(3) of the Children (Scotland) Act 1995 (c. 36); and
  - “parental rights”, in relation to a child, has the meaning given by section 2(4) of that Act.

## **253 Declaration in relation to named person**

- (1) Subject to subsection (4) below and to section 257 of this Act, where a person who has attained the age of 16 years (“the declarer”) makes a declaration in writing in

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accordance with subsection (2) below stating that a person specified in the declaration shall not be the declarer’s named person, that person shall not be the declarer’s named person.

- (2) A declaration is made in accordance with this subsection if—
- (a) signed by the declarer; and
  - (b) witnessed by a prescribed person who certifies that, in the opinion of the prescribed person, the declarer—
    - (i) understands the effect of making the declaration; and
    - (ii) has not been subjected to any undue influence in making the declaration.
- (3) A declaration under this section shall be effective notwithstanding the individual’s becoming, after making the declaration, incapable.
- (4) A declaration under subsection (1) above may be revoked by the declarer in accordance with subsection (5) below.
- (5) A declaration is revoked in accordance with this subsection if the revocation is—
- (a) signed by the declarer; and
  - (b) witnessed by a prescribed person who shall certify that, in the opinion of the prescribed person, the declarer—
    - (i) understands the effect of revoking the declaration; and
    - (ii) has not been subjected to any undue influence in making the revocation.
- (6) In this section, “incapable” and “prescribed person” have the same meaning as in section 250 of this Act.

#### **254 Meaning of “nearest relative”**

- (1) In this Act, “nearest relative”, in relation to a person (the “relevant person”), means—
- (a) subject to subsection (3) below, in a case where only one person falls within the list set out in subsection (2) below, that person;
  - (b) subject to subsections (3) and (4) below, in a case where two or more persons fall within that list, the person falling within the paragraph first appearing in the list set out in subsection (2) below.
- (2) The list mentioned in subsection (1) above is—
- (a) the relevant person’s spouse;
  - (b) a person such as is mentioned in subsection (7) below;
  - (c) the relevant person’s child;
  - (d) the relevant person’s parent;
  - (e) the relevant person’s brother or sister;
  - (f) the relevant person’s grandparent;
  - (g) the relevant person’s grandchild;
  - (h) the relevant person’s uncle or aunt;
  - (i) the relevant person’s niece or nephew;
  - (j) the person mentioned in subsection (8) below.
- (3) If the relevant person’s spouse—

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- (a) is permanently separated (either by agreement or under an order of a court) from the relevant person; or
  - (b) has deserted, or has been deserted by, the relevant person and the desertion continues,
- subsection (2)(a) above shall be disregarded for the purposes of subsection (1) above.
- (4) Where two or more persons fall within the paragraph first appearing on the list set out in subsection (2) above, the nearest relative shall be—
- (a) if those persons agree that one of them should be the nearest relative, that person; or
  - (b) if those persons do not so agree, the person determined in accordance with the following rules—
    - (i) brothers and sisters of the whole blood shall be preferred over brothers and sisters of the half-blood; and
    - (ii) the elder or eldest, as the case may be, shall be preferred.
- (5) A relevant person's nearest relative may decline to be the named person of the relevant person by giving notice to—
- (a) the relevant person; and
  - (b) the local authority for the area in which the relevant person resides,
- to that effect.
- (6) For the purposes of subsection (2) above—
- (a) a relationship of the half-blood shall, subject to subsection (4)(b)(i) above, be treated as a relationship of the whole blood;
  - (b) the stepchild of a person shall be treated as the child of that person;
  - (c) if the relevant person is ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man, any person who is not so resident shall be disregarded; and
  - (d) any person who is under 16 years of age shall be disregarded.
- (7) The person referred to in subsection (2)(b) above is a person who—
- (a) is living with the relevant person—
    - (i) as husband and wife; or
    - (ii) in a relationship which has the characteristics of the relationship between husband and wife except that the person and the relevant person are of the same sex; and
  - (b) has been living with the relevant person for a period of at least 6 months or, if the relevant person is for the time being in hospital, had been living with the relevant person for such period when the relevant person was admitted to hospital.
- (8) The person referred to in subsection (2)(j) above is a person who—
- (a) is living with the relevant person and has been living with the relevant person for a period of at least 5 years; or
  - (b) if the relevant person is in hospital, had been living with the relevant person for such period when the relevant person was admitted to hospital.

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*Mental health officer's duties etc.*

**255 Named person: mental health officer's duties etc.**

- (1) Subsection (2) below applies where—
  - (a) a mental health officer is discharging any function by virtue of this Act or the 1995 Act in relation to a patient; and
  - (b) it is necessary for the purposes of the discharge of the function to establish whether the patient has a named person.
- (2) The mental health officer shall take such steps as are reasonably practicable—
  - (a) to establish whether the patient has a named person; and
  - (b) if so, to ascertain who that person is.
- (3) Subsection (4) below applies where the mental health officer—
  - (a) establishes that the patient does not have a named person; or
  - (b) is unable to establish whether the patient has a named person.
- (4) The mental health officer—
  - (a) shall make a record of the steps taken under subsection (2)(a) above; and
  - (b) may apply to the Tribunal for an order under section 257 of this Act.
- (5) Where the mental health officer makes a record under subsection (4)(a) above, the mental health officer shall, as soon as practicable, give a copy of the record to—
  - (a) the Tribunal; and
  - (b) the Commission.
- (6) Where by virtue of subsection (2) above—
  - (a) the mental health officer—
    - (i) establishes that the patient has a named person; and
    - (ii) ascertains the name of that person (“the apparent named person”); but
  - (b) the mental health officer considers that it is inappropriate for the apparent named person to be the patient’s named person,

the mental health officer shall apply to the Tribunal for an order under section 257 of this Act.
- (7) Where—
  - (a) a mental health officer is discharging any function by virtue of this Act in relation to a patient; and
  - (b) it appears to the mental health officer—
    - (i) that the patient does not have a named person; or
    - (ii) that the patient has a named person (“the apparent named person”) but the mental health officer considers that it is inappropriate for the apparent named person to be the patient’s named person,

the mental health officer may apply to the Tribunal for an order under section 257 of this Act.

*Applications to Tribunal by patient etc.*

**256 Named person: application by patient etc.**

- (1) Where—
  - (a) it appears to a person mentioned in subsection (2) below (any such person being referred to in this section as “the applicant”) that a patient does not have a named person;
  - (b) the applicant considers that though the patient has a named person it is inappropriate that that person be the patient’s named person; or
  - (c) circumstances of such description as may be prescribed by regulations exist, the applicant may apply to the Tribunal for an order under section 257 of this Act in relation to the patient.
- (2) Those persons are—
  - (a) the patient;
  - (b) the patient’s responsible medical officer;
  - (c) if the patient is a child, any person who has parental responsibilities in relation to the patient;
  - (d) if the patient is in hospital, the managers of the hospital;
  - (e) any welfare attorney of the patient;
  - (f) any guardian of the patient;
  - (g) any relative of the patient; and
  - (h) any other person having an interest in the welfare of the patient.
- (3) In subsection (2)(c) above, “child” and “parental responsibilities” have the same meanings as they have in Part I of the Children (Scotland) Act 1995 (c. 36)

*Tribunal’s powers*

**257 Named person: Tribunal’s powers**

- (1) Where—
  - (a) an application is made under section 255(4)(b) or (7)(b)(i) or 256(1)(a) of this Act; and
  - (b) the Tribunal is satisfied that the patient does not have a named person, the Tribunal may, subject to subsection (4) below, make an order appointing the person specified in the order to be the patient’s named person.
- (2) Where—
  - (a) an application is made under section 255(6) or (7)(b)(ii) or 256(1)(b) of this Act; and
  - (b) the Tribunal is satisfied that it is inappropriate for the named person (“the acting named person”) to be the patient’s named person, the Tribunal may, subject to subsection (4) below, make an order declaring that the acting named person is not the named person or appointing the person specified in the order to be the patient’s named person in place of the acting named person.

- (3) Where an application is made under section 256(1)(c) of this Act, the Tribunal may, subject to subsection (4) below, make such order as it thinks fit.
- (4) It shall not be competent for the Tribunal to make an order under this section appointing a person who has not attained the age of 16 years to be a patient's named person.

*Interpretation of Chapter*

**258 Interpretation of Chapter**

In this Chapter, other than section 252, “person” means a natural person.

**CHAPTER 2**

ADVOCACY ETC.

*Advocacy*

**259 Advocacy**

- (1) Every person with a mental disorder shall have a right of access to independent advocacy; and accordingly it is the duty of—
  - (a) each local authority, in collaboration with the (or each) relevant Health Board; and
  - (b) each Health Board, in collaboration with the (or each) relevant local authority, to secure the availability, to persons in its area who have a mental disorder, of independent advocacy services and to take appropriate steps to ensure that those persons have the opportunity of making use of those services.
- (2) Each relevant Health Board and local authority shall, for the purposes of subsection (1) above, collaborate with the local authority or, as the case may be, Health Board in relation to which it is the relevant Board or authority.
- (3) For the purposes of subsections (1) and (2) above—
  - (a) a Health Board is, in relation to a local authority, a “relevant” Health Board if its area or part of its area is the same as or is included in the area of the local authority; and
  - (b) a local authority is, in relation to a Health Board, a “relevant” local authority if its area or part of its area is the same as or is included in the area of the Health Board.
- (4) In subsection (1) above, “advocacy services” are 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.
- (5) For the purposes of subsection (1) above, advocacy services are “independent” if they are to be provided by a person who is none of the following—
  - (a) a local authority;

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- (b) a Health Board;
  - (c) a National Health Service trust;
  - (d) a member of—
    - (i) the local authority;
    - (ii) the Health Board;
    - (iii) a National Health Service trust,in the area of which the person to whom those services are made available is to be provided with them;
  - (e) a person who—
    - (i) in pursuance of arrangements made between that person and a Health Board, is giving medical treatment to;
    - (ii) in pursuance of those arrangements, is providing, under the National Health Service (Scotland) Act 1978 (c. 29), treatment, care or services for; or
    - (iii) in pursuance of arrangements made between that person and a local authority, is providing, under Part II of the Social Work (Scotland) Act 1968 (c. 49) (promotion of social welfare) or any of the enactments specified in section 5(1B) of that Act, services for,the person to whom the advocacy services are made available;
  - (f) in relation to a patient detained in a state hospital or a person who (by virtue of any of the means specified in subsection (11)(b) below) is no longer detained there, the State Hospitals Board for Scotland or a member of that Board.
- (6) In subsection (5)(d) above the reference to the area of a National Health Service trust is a reference to the Health Board area in which the trust discharges its functions.
- (7) It is the duty of the State Hospitals Board for Scotland (the “State Hospitals Board”) to secure the availability to persons who are patients detained in a state hospital of the services referred to in subsection (1) above and, in relation to those persons, to take the steps there referred to.
- (8) It is the duty of—
- (a) the State Hospitals Board, in collaboration with each relevant local authority and Health Board; and
  - (b) each relevant local authority and Health Board, in collaboration with the State Hospitals Board,
- to secure the availability to relevant persons of the services referred to in subsection (1) above, and, in relation to those persons, to take the steps there referred to.
- (9) Each relevant local authority and Health Board shall, for the purposes of subsection (8) (a) above, collaborate with the State Hospitals Board and with each other.
- (10) The State Hospitals Board shall, for the purposes of subsection (8)(b) above, collaborate with each relevant local authority and Health Board.
- (11) For the purposes of subsections (8) to (10) above—
- (a) a local authority or Health Board is a relevant local authority or, as the case may be, Health Board if there is residing in its area a relevant person;

- (b) a relevant person is a person with a mental disorder who, having been detained as a patient in a state hospital, is (by virtue of section 127 or 193(7) of this Act) no longer detained there.

### *Information*

## **260 Provision of information to patient**

- (1) This section applies where a patient—
- (a) is detained in hospital by virtue of—
    - (i) this Act; or
    - (ii) the 1995 Act; or
  - (b) though not detained in hospital, is subject to—
    - (i) an emergency detention certificate;
    - (ii) a short-term detention certificate;
    - (iii) a compulsory treatment order;
    - (iv) an interim compulsory treatment order;
    - (v) an assessment order;
    - (vi) a treatment order;
    - (vii) a hospital direction;
    - (viii) a transfer for treatment direction;
    - (ix) an interim compulsion order; or
    - (x) a compulsion order.
- (2) The appropriate person shall—
- (a) take all reasonable steps—
    - (i) to ensure that the patient understands the relevant matters at each of the times mentioned in subsection (3) below;
    - (ii) to ensure that the patient is supplied with material appropriate to the patient’s needs (and in a form that is appropriate to those needs and permanent) from which the patient may refresh the patient’s understanding of those matters; and
    - (iii) to inform the patient of the availability under section 259 of this Act of independent advocacy services at each of those times; and
  - (b) take appropriate steps to ensure that the patient has the opportunity of making use of those services.
- (3) Those times are—
- (a) as soon as practicable after—
    - (i) where the patient is detained in hospital, the beginning of such detention; or
    - (ii) where the patient is not so detained, the making of the order;
  - (b) as soon as practicable after any occasion on which the patient reasonably requests to be informed of those matters; and
  - (c) such other times as may be prescribed by regulations.
- (4) Where material is supplied to the patient under subsection (2)(a)(ii) above, the appropriate person shall, as soon as practicable after such material is supplied, take all

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reasonable steps to ensure that the patient's named person is supplied with a copy of such material in a form that is appropriate to the person's needs.

(5) In this section—

“the appropriate person” means—

- (a) where the patient is detained in hospital, the managers of the hospital;
- (b) where by virtue of a certificate granted under any provision of this Act, the authorisation to detain the patient in a hospital is suspended, the managers of the hospital in which, but for the certificate, the patient would be authorised to be detained;
- (c) in any other case, the managers of the hospital specified in the order; and

“the relevant matters” means—

- (a) the provision of this Act or the 1995 Act by virtue of which—
  - (i) the patient is being detained; or
  - (ii) the order has effect;
- (b) the consequences of the operation of that provision;
- (c) the powers that the patient's responsible medical officer and the Tribunal each has in relation to revoking that provision;
- (d) any right to make an application, or appeal, to the Tribunal that the patient has by virtue of that provision;
- (e) the powers exercisable by the Tribunal in the event of any such right being exercised;
- (f) how the patient may exercise any such right;
- (g) the functions that the Commission has that appear to be relevant to the patient's case;
- (h) how the patient may obtain legal assistance as respects any such right.

## **261 Provision of assistance to patient with communication difficulties**

(1) This section applies where—

- (a) a patient is detained in hospital by virtue of—
  - (i) this Act; or
  - (ii) the 1995 Act; or
- (b) though not detained in hospital, a patient is subject to—
  - (i) an emergency detention certificate;
  - (ii) a short-term detention certificate;
  - (iii) a compulsory treatment order;
  - (iv) an interim compulsory treatment order;
  - (v) an assessment order;
  - (vi) a treatment order;
  - (vii) a hospital direction;
  - (viii) a transfer for treatment direction;
  - (ix) an interim compulsion order; or
  - (x) a compulsion order,

and the patient has difficulty in communicating or generally communicates in a language other than English.

- (2) The appropriate person shall take all reasonable steps to secure that, for the purpose of enabling the patient to communicate during each of the events mentioned in subsection (3) below—
- (a) arrangements appropriate to the patient’s needs are made; or
  - (b) the patient is provided with assistance, or material, appropriate to the patient’s needs.
- (3) Those events are—
- (a) any medical examination of the patient carried out for the purpose of assessing the patient’s mental disorder;
  - (b) any review under this Act or the 1995 Act of the patient’s detention; or
  - (c) any proceedings before the Tribunal relating to the patient.
- (4) As soon as practicable after taking any steps under subsection (2) above, the appropriate person shall make a written record of the steps.
- (5) In this section “the appropriate person” has the meaning given by section 260(5) of this Act.

*Access to medical practitioner*

**262 Access to medical practitioner for purposes of medical examination**

- (1) This section applies where a patient is detained in hospital by virtue of—
- (a) this Act; or
  - (b) the 1995 Act.
- (2) A duly authorised medical practitioner may, for any of the purposes mentioned in subsection (3) below, visit the patient at any reasonable hour and carry out a medical examination of the patient in private.
- (3) Those purposes are—
- (a) advising the patient or, as the case may be, the patient’s named person about the making of applications to the Tribunal in respect of the patient under this Act; and
  - (b) providing to the patient or, as the case may be, the patient’s named person information as respects the condition of the patient for the purpose of—
    - (i) any such application (or proposed application); or
    - (ii) any other proceedings before the Tribunal in respect of the patient in which the patient or, as the case may be, the patient’s named person is taking part (or considering whether to take part).
- (4) For the purposes of subsection (2) above and subject to subsection (5) below, a medical practitioner is duly authorised if authorised for the purposes of this section by—
- (a) the patient; or
  - (b) the patient’s named person.
- (5) Authorisation given for the purposes of this section by the patient’s named person may be rescinded by the patient at any time when the patient is not incapable.
- (6) In subsection (5) above, “incapable” has the same meaning as in section 250(7) of this Act.

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## **263 Inspection of records by medical practitioner**

- (1) A duly authorised medical practitioner may, for any of the purposes mentioned in subsection (3) below, require any person holding records relating to—
  - (a) the detention of; or
  - (b) medical treatment given at any time to,a patient whose detention in hospital is authorised by virtue of this Act or the 1995 Act to produce them for inspection by the medical practitioner.
- (2) A duly authorised medical practitioner may, for any of the purposes mentioned in subsection (3) below, require any person holding records relating to medical treatment given at any time to a patient who is subject to—
  - (a) a compulsory treatment order; or
  - (b) a compulsion order,that does not authorise the detention of the patient in hospital to produce them for inspection by the medical practitioner.
- (3) Those purposes are—
  - (a) advising the patient or, as the case may be, the patient’s named person about the making of applications to the Tribunal in respect of the patient under this Act;
  - (b) providing to the patient or, as the case may be, the patient’s named person information as respects the condition of the patient for the purpose of—
    - (i) any such application (or proposed application); or
    - (ii) any other proceedings before the Tribunal in respect of the patient in which the patient or, as the case may be, the patient’s named person is taking part (or considering whether to take part).
- (4) For the purposes of subsections (1) and (2) above and subject to subsection (5) below, a medical practitioner is duly authorised if authorised for the purposes of this section by—
  - (a) the patient; or
  - (b) the patient’s named person.
- (5) Authorisation given for the purposes of this section by the patient’s named person may be rescinded by the patient at any time when the patient is not incapable.
- (6) In subsection (5) above, “incapable” has the same meaning as in section 250(7) of this Act.

## **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;

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- (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.
- (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.

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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 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
  - (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.

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- (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.
- (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;

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- (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.
- (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

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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 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,

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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.