



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

2003 asp 13

PART 18

MISCELLANEOUS

Informal patients

291 Application to Tribunal in relation to unlawful detention

- (1) This section applies where, otherwise than by virtue of this Act or the 1995 Act, a person (“the patient”)—
 - (a) has been admitted to a hospital; and
 - (b) is being given treatment there primarily for mental disorder.
- (2) A person mentioned in subsection (4) below may apply to the Tribunal for an order requiring the managers of the hospital to cease to detain the patient.
- (3) On an application under subsection (2) above the Tribunal shall—
 - (a) if satisfied that the patient is being unlawfully detained in the hospital, make the order mentioned in subsection (2) above; or
 - (b) if not satisfied about the matter mentioned in paragraph (a) above, refuse the application.
- (4) The persons referred to in subsection (2) above are—
 - (a) the patient;
 - (b) the patient’s named person;
 - (c) if the patient is a child, any person who has parental responsibilities in relation to the patient;
 - (d) a mental health officer;
 - (e) the Commission;
 - (f) any guardian of the patient;
 - (g) any welfare attorney of the patient; and
 - (h) any other person having an interest in the welfare of the patient.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Informal patients* is up to date with all changes known to be in force on or before 19 July 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](#)

- (5) Subsection (2) above is without prejudice to any right that a person has by virtue of any enactment or rule of law.
- (6) In subsection (4)(c) above, “child” and “parental responsibilities” have the same meanings as they have in Part I of the Children (Scotland) Act 1995 (c. 36).

Commencement Information

- II** S. 291 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

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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\(3\)](#)