



# 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.

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*Status: This is the original version (as it was originally enacted).*

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- (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).