



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.

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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 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)

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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\(3\)](#)