



Mental Health (Scotland) Act 2015

2015 asp 9

PART 1

THE 2003 ACT

Orders regarding level of security

16 Orders relating to non-state hospitals

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 268 (detention in conditions of excessive security: hospitals other than state hospitals)—
 - (a) in subsection (1), the word “qualifying” in the first place where it occurs is repealed,
 - (b) in subsection (2), for the words from “detention” to “patient’s case” there is substituted “the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient”,
 - (c) in subsection (5), for the words from “to the managers” to the end there is substituted “of the name of the hospital so identified to the managers of the hospital in which the patient is detained”,
 - (d) in subsection (6), the word “qualifying” in each place where it occurs is repealed,
 - (e) in subsection (10)—
 - (i) except in paragraph (e), the word “qualifying” in each place where it occurs is repealed,
 - (ii) in paragraph (e), for the words “qualifying hospital” there is substituted “hospital in which the patient is detained”,
 - (f) subsections (11) to (14) are repealed.
- (3) In section 269 (order under section 268: further provision)—
 - (a) in each of subsections (1) and (2), the word “qualifying” is repealed,
 - (b) in subsection (3), for the words from “detention” to “patient’s case” there is substituted “the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient”,

- (c) in subsection (6), for the words from “to the managers” to the end there is substituted “of the name of the hospital so identified to the managers of the hospital in which the patient is detained”.
- (4) In section 271 (orders under sections 268 to 270: recall)—
 - (a) in subsection (1), the word “qualifying” is repealed,
 - (b) in subsection (2)(a), for the words from “detention” to “patient’s case” there is substituted “the test specified in regulations made under section 271A(2) of this Act is not met in relation to the patient”.
- (5) After section 271 there is inserted—

“Process for orders: further provision

271A Regulation-making powers

- (1) A hospital is a “qualifying hospital” for the purposes of sections 268 to 271 of this Act if—
 - (a) it is not a state hospital, and
 - (b) it is specified, or is of a description specified, in regulations.
- (2) Regulations may specify the test for the purposes of sections 268(2), 269(3) and 271(2)(a) of this Act.
- (3) Regulations under subsection (2) above specifying the test—
 - (a) must include as a requirement for the test to be met in relation to a patient that the Tribunal be satisfied that detention of the patient in the hospital in which the patient is being detained involves the patient being subject to a level of security that is excessive in the patient’s case, and
 - (b) may include further requirements for the test to be met in relation to a patient.
- (4) Regulations may make provision about when, for the purposes of—
 - (a) any regulations made under subsection (2) above, and
 - (b) sections 268 to 271 of this Act,
 a patient’s detention in a hospital is to be taken to involve the patient being subject to a level of security that is excessive in the patient’s case.
- (5) Regulations may modify sections 264 and 268 of this Act so as to provide that a person must meet criteria besides being a medical practitioner in order to prepare a report for the purpose of subsection (7A) in each of those sections.”.
- (6) In section 273 (interpretation of Chapter), for the definition of “relevant patient” there is substituted—
 - ““relevant patient” means a patient whose detention in hospital is authorised by—
 - (a) if the patient is also subject to a restriction order, a compulsion order,
 - (b) a hospital direction, or
 - (c) a transfer for treatment direction.”.

- (7) In section 326 (orders, regulations and rules), in subsection (4)(c), for the words “268(11) to (14)” there is substituted “271A”.