

*Draft Regulations laid before the Scottish Parliament under section 326(4) of the Mental Health (Care and Treatment) (Scotland) Act 2003 for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2015 No.**

**MENTAL HEALTH**

**The Mental Health (Detention in Conditions of Excessive Security) (Scotland) Regulations 2015**

*Made* - - - - 2015  
*Coming into force* - - 16th November 2015

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 271A of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 326(4) of that Act<sup>(2)</sup>, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Mental Health (Detention in Conditions of Excessive Security) (Scotland) Regulations 2015 and come into force on 16th November 2015.

**Interpretation**

2. In these Regulations—

- (a) “the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(3)</sup>; and
- (b) reference to a hospital includes a hospital unit as defined in section 273(3) of the 2003 Act<sup>(4)</sup>.

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(1) 2003 asp 13 (“the 2003 Act”). Section 271A of the 2003 Act is inserted by section 16(5) of the Mental Health (Scotland) Act 2015 (asp 9) (“the 2015 Act”). By virtue of section 17(1) of the 2015 Act, regulations may be made by virtue of section 271A of the 2003 Act prior to section 16(5) of the 2015 Act coming into force.

(2) Section 326(4) of the 2003 Act has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and relevantly amended by section 16(7) of the 2015 Act. By virtue of section 17(2) of the 2015 Act, the amendment made by section 16(7) of that Act is deemed to be in effect for the purposes of these Regulations.

(3) There are amendments to the 2003 Act relevant to these Regulations, which are made by sections 14 to 18 of the 2015 Act.

(4) Section 273(3) of the 2003 Act is inserted by section 18 of the 2015 Act.

### **Amendments to the 2003 Act**

3. In both—

- (a) section 264(7A) of the 2003 Act; and
- (b) section 268(7A) of that Act,

for “a medical” substitute “an approved medical”(5).

### **Meaning of qualifying hospital**

4. The following are qualifying hospitals for the purposes of sections 268 to 271 of the 2003 Act—

- (a) the Orchard Clinic in Royal Edinburgh Hospital, Morningside Terrace, Edinburgh;
- (b) the Rowanbank Clinic, 133C Balornock Road, Glasgow; and
- (c) the Medium Secure Service, Rohallion Clinic, Murray Royal Hospital, Muirhall Road, Perth.

### **Test to be applied under sections 268(2), 269(3) and 271(2)(a) of the 2003 Act**

5. The test for the purposes of sections 268(2), 269(3) and 271(2)(a) of the 2003 Act is met in relation to a patient if 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.

### **Further provision about when a hospital’s level of security is excessive**

6.—(1) Paragraph (2) makes provision for the purposes of—

- (a) sections 268 to 271 of the 2003 Act; and
- (b) regulation 5.

(2) 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 only when the security at the hospital is greater than is necessary to safely manage the risk that the patient may pose to—

- (a) the patient’s own safety; and
- (b) the safety of any other person.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

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(5) Sections 264(7A) and 268(7A) are inserted by section 14 of the 2015 Act.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Regulations make provision in connection with appeals under sections 264 and 268 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). An appeal under one of those sections is an appeal to the Mental Health Tribunal for Scotland (“the Tribunal”) against detaining a patient in a particular hospital or hospital unit on the grounds that detaining the patient there entails subjecting the patient to an excessive level of security.

Sections 264(7A) and 268(7A) of the 2003 Act require an application initiating an excessive-security appeal to be backed by a medical report. The effect of regulation 3 is that it will only be competent for such a report to be provided by an approved medical practitioner as defined in section 22(4) of the 2003 Act.

An excessive-security appeal may be brought by, or on behalf of, a patient under section 268 of the 2003 Act only if the patient is being detained in a “qualifying hospital”. Regulation 4 defines “qualifying hospital” for the purposes of section 268 by specifying as qualifying hospitals Scotland’s three medium-secure units.

Regulation 5 sets out the test that the Tribunal is to apply when making certain decisions under the 2003 Act, namely whether: (1) to grant an excessive-security appeal under section 268, (2) to make an order under section 269 (section 269 applies where the order made by the Tribunal when it granted an appeal under section 268 has not been complied with within the time allowed), (3) to recall, under section 271, an order it made under section 268 or 269.

Regulation 6 makes provision about when detaining a patient in a given hospital or hospital unit is to be regarded as subjecting the patient to an excessive level of security. It requires that the assessment be made having regard to the need to ensure the safety of both the patient and others. Regulation 6 applies in the context of the Tribunal making one of the decisions referred to in the preceding paragraph (that is, in the context of the Tribunal applying the regulation 5 test), and also applies for the purposes of identifying a hospital or hospital unit to which the patient can appropriately be transferred in the event that the Tribunal judges a patient’s present place of detention to be excessively secure.