



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

2003 asp 13

PART 17

PATIENT REPRESENTATION ETC.

CHAPTER 3

DETENTION IN CONDITIONS OF EXCESSIVE SECURITY

State hospitals

264 Detention in conditions of excessive security: state hospitals

- (1) This section applies where a patient's detention in a state 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 the patient does not require to be detained under conditions of special security that can be provided only in a state hospital, 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.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: State hospitals is up to date with all changes known to be in force on or before 22 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*

- (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 appropriate conditions; 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 appropriate conditions; 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 to the managers of the state hospital of the name of the hospital so identified.
- (6) The persons referred to in subsection (2) above are—
- (a) the patient;
 - (b) the patient's named person;
 - (c) any guardian of the patient;
 - (d) any welfare attorney of the 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.
- [^{F1}(7A) An application may not be made under subsection (2) above unless it is accompanied by a report prepared by [^{F2}an approved medical] practitioner which—
- (a) states that in the practitioner's opinion the patient does not require to be detained under conditions of special security that can be provided only in a state hospital, 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;
 - (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.

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- (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 patient;
 - (b) the patient’s named person;
 - (c) the relevant Health Board;
 - (d) the patient’s responsible medical officer;
 - (e) the managers of the state hospital in which the patient is detained;
 - (f) the mental health officer;
 - (g) any guardian of the patient;
 - (h) any welfare attorney of the patient;
 - (i) any curator *ad litem* appointed by the Tribunal in respect of the 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.

Textual Amendments

- F1** S. 264(7A) inserted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 14(2)**, 61(2); S.S.I. 2015/361, **art. 2** (with **arts. 3, 6**)
- F2** Words in s. 264(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(a)**

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. 264 in force at 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)

265 Order under section 264: further provision

- (1) This section applies where—
- (a) an order is made under section 264(2) of this Act in respect of a patient; and
 - (b) the order is not recalled under section 267 of this Act;
- 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) If the relevant Health Board fails, during the period specified in the order, to give notice to the Tribunal that the patient has been transferred to another hospital, there shall be a hearing before the Tribunal.
- (3) Where such a hearing is held, the Tribunal may, if satisfied that the patient does not require to be detained under conditions of special security that can be provided only in a state hospital, make an order—

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: State hospitals is up to date with all changes known to be in force on or before 22 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*

- (a) declaring that the patient is being detained in conditions of excessive security; and
 - (b) specifying—
 - (i) a period of 28 days; or
 - (ii) such longer period not exceeding 3 months as the Tribunal thinks fit, beginning with the day on which the order is made during which the duties under subsections (4) to (6) below shall be performed.
- (4) Where the Tribunal makes an order under subsection (3) 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 appropriate conditions; and
 - (c) in which accommodation is available for the patient.
- (5) Where the Tribunal makes an order under subsection (3) 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 appropriate conditions; and
 - (c) in which accommodation is available for the patient.
- (6) Where the Tribunal makes an order under subsection (3) above in respect of a patient, the relevant Health Board shall, as soon as practicable after identifying a hospital under subsection (4) or, as the case may be, (5) above, give notice to the managers of the state hospital of the name of the hospital so identified.
- (7) Before making an order under subsection (3) above, the Tribunal shall afford the persons mentioned in section 264(10) of this Act the opportunity—
- (a) of making representations (whether orally or in writing); and
 - (b) of leading, or producing, evidence.

Commencement Information

- I3** 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)
- I4** S. 265 in force at 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)

F3 266 Order under section 265: further provision

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Textual Amendments

- F3** S. 266 repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. **15(2)**, 61(2); S.S.I. 2015/361, art. 2 (with arts. 4-6)

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: State hospitals is up to date with all changes known to be in force on or before 22 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*

267 [F⁴Order under section 264 or 265: recall]

- (1) This section applies where an order is made under section 264(2) [F⁵or 265(3)] of this Act in respect of a patient.
- (2) On the application of any of the persons mentioned in subsection (4) below, the Tribunal—
 - (a) shall, if satisfied that the patient requires to be detained under conditions of special security that can be provided only in a state hospital, recall the order;
 - (b) may, on any other grounds, recall the order.
- (3) Where the order is recalled, the relevant Health Board ceases to be subject to the duties under section 264(3) to (5) [F⁶or 265(4) to (6)] to which it became subject by virtue of the making of the order.
- (4) The persons referred to in subsection (2) above are—
 - (a) the relevant Health Board;
 - (b) in the case of a relevant patient, the Scottish Ministers;
 - (c) in the case of a patient who is not a relevant patient, the patient’s responsible medical officer.
- (5) Before determining an application under subsection (2) above, the Tribunal shall—
 - (a) afford the persons mentioned in section 264(10) of this Act 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.

Textual Amendments

- F4** S. 267 title substituted (16.11.2015) by virtue of [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 15\(4\), 61\(2\); S.S.I. 2015/361, art. 2](#) (with arts. 4-6)
- F5** Words in s. 267(1) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 15\(3\) \(a\), 61\(2\); S.S.I. 2015/361, art. 2](#) (with arts. 4-6)
- F6** Words in s. 267(3) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 15\(3\) \(b\), 61\(2\); S.S.I. 2015/361, art. 2](#) (with arts. 4-6)

Commencement Information

- I5** 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)
- I6** S. 267 in force at 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)

Changes to legislation:

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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\(3\)](#)