



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

## 2003 asp 13

### PART 11

#### HOSPITAL DIRECTIONS AND TRANSFER FOR TREATMENT DIRECTIONS

##### *Proceedings before Tribunal*

#### **215 Powers of Tribunal on reference under section 210(3), 211(2) or 213(2) or on application under section 214(2)**

- (1) This section applies where—
  - (a) a reference is made under section 210(3), 211(2) or 213(2) of this Act; or
  - (b) an application is made under section 214(2) of this Act.
- (2) If the Tribunal is satisfied—
  - (a) that the patient has a mental disorder; and
  - (b) that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment,it shall make no direction to the Scottish Ministers under this section.
- (3) If the Tribunal is not satisfied that the patient has a mental disorder, it shall direct the Scottish Ministers to revoke the direction to which the patient is subject.
- (4) If the Tribunal—
  - (a) is satisfied that the patient has a mental disorder; but
  - (b) is not satisfied—
    - (i) that, as a result of the patient's mental disorder, it is necessary, in order to protect any other person from serious harm, for the patient to be detained in hospital, whether or not for medical treatment; and
    - [<sup>F1</sup>(ii) either—

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*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Section 215 is up to date with all changes known to be in force on or before 13 June 2024. 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*

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- (A) that the conditions mentioned in paragraph (b) and (c) of section 206(4) of this Act continue to apply in respect of the patient; or
- (B) that it continues to be necessary for the patient to be subject to the direction,]

the Tribunal shall direct the Scottish Ministers to revoke the direction to which the patient is subject.

- (5) The Scottish Ministers shall, if directed to do so by the Tribunal under subsection (3) or (4) above, revoke the direction to which the patient is subject.
- (6) Before making a decision under this section, the Tribunal shall—
  - (a) afford the persons mentioned in subsection (7) 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.
- (7) Those persons are—
  - (a) the patient;
  - (b) the patient's named person;
  - (c) the patient's primary carer;
  - (d) any guardian of the patient;
  - (e) any welfare attorney of the patient;
  - (f) any curator *ad litem* appointed in respect of the patient by the Tribunal;
  - (g) the Scottish Ministers;
  - (h) the patient's responsible medical officer;
  - (i) the mental health officer; and
  - (j) any other person appearing to the Tribunal to have an interest.
- (8) Nothing in section 102 (state hospitals) of the National Health Service (Scotland) Act 1978 (c. 29) prevents or restricts the detention of a patient in a state hospital as a result of a decision under this section by the Tribunal not to direct the Scottish Ministers to revoke the direction to which the patient is subject.

#### Textual Amendments

- F1** S. 215(4)(b)(ii) substituted (22.3.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. 70(5), 79(2)

#### Commencement Information

- I1** S. 215 in force at 5.10.2005 by [S.S.I. 2005/161](#), art. 3 (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

**Changes to legislation:**

Mental Health (Care and Treatment) (Scotland) Act 2003, Section 215 is up to date with all changes known to be in force on or before 13 June 2024. 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.

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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\(3\)](#)