



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

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—
 - (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,

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Section 265 is up to date with all changes known to be in force on or before 25 May 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*

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

- 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. 265 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\(3\)](#)