



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

267 [F¹Order under section 264 or 265: recall]

- (1) This section applies where an order is made under section 264(2) [F²or 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) [F³or 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—

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Section 267 is up to date with all changes known to be in force on or before 22 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*

- (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

- F1** 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](#))
- F2** 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](#))
- F3** 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

- 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. 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:

Mental Health (Care and Treatment) (Scotland) Act 2003, Section 267 is up to date with all changes known to be in force on or before 22 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.

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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\(3\)](#)