

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part One – the 2003 Act

Section 14: Requirement for medical report

46. Chapter 3 of Part 17 of the 2003 Act is concerned with appeals against detention in conditions of excessive security.
47. Section 264 of the 2003 Act provides at present that a patient detained in a state hospital by virtue of a compulsory treatment order (CTO), a compulsion order (CO), a hospital direction (HD) or a transfer for treatment direction (TTD) can apply to the Tribunal for an order declaring that the patient is being detained in conditions of excessive security. Similar provision is made at section 268 for patients detained in hospitals other than a state hospital. Where the Tribunal is satisfied that the conditions of security are excessive, the Tribunal can make an order declaring that the patient is being detained in conditions of excessive security and specifying a period of three months or less for the relevant Health Board to identify another hospital where the patient could be detained in conditions which would not involve an excessive level of security. By virtue of sections 265 (state hospital) and 269 (non-state hospital), if a suitable alternative hospital has not been identified, a further period of between 28 days and 3 months can be given to the relevant Health Board to identify such a hospital. After that, by virtue of section 266 (state hospital) and 270 (non-state hospital), another 28 days can be given to the relevant Health Board to identify such a hospital.
48. Where the patient is a relevant patient (defined in section 273 as a patient who is subject to a compulsion order and restriction order, a hospital direction or transfer for treatment direction), the Health Board is required to obtain the agreement of the Scottish Ministers that the alternative hospital identified is one in which the patient could be detained in conditions which would not involve an excessive level of security.

Amendment to [section 264](#) and [268](#)

49. [Section 14](#) amends sections 264 and 268 of the 2003 Act to introduce a new requirement for a report by a medical practitioner to accompany an application to the Tribunal under those sections for an order declaring that a patient is being detained in conditions of excessive security and requiring the Health Board to identify a hospital in which the patient could be detained in appropriate conditions. The report must state that, in the practitioner's opinion, the test set out in regulations is met in relation to the patient, and set out the reasons for that opinion. The regulations referred to are those made under section 271A of the 2003 Act, inserted by section 16 of the Act.