

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part One – the 2003 Act

Section 16: Orders relating to non-state hospitals

New section 271A

58. Section 16(5) of the Act inserts new section 271A into the 2003 Act. Subsection (1) of inserted section 271A provides that a qualifying hospital is a hospital which is not a state hospital and which is specified or is of a description specified in regulations. Only patients who are detained in qualifying hospitals within the meaning set out in regulations made under subsection (1) will have the right to make an application to the Tribunal under section 268.
59. Subsection (2) of section 271A provides that regulations may also set out the test for the purposes of the Tribunal's consideration of whether to make an order under sections 268, 269 and 271 of the Act. The test must, by virtue of subsection (3)(a), include a requirement that the Tribunal is satisfied that detention of the patient in the hospital in question involves the patient being subject to a level of security that is excessive in the patient's case. In addition it may, by virtue of subsection (3)(b), include other requirements.
60. Subsection (4) of section 271A includes a power for Ministers to make provision in regulations about when, for the purposes of regulations made under subsection (2) and sections 268 to 271 of the Act, a patient's detention in a hospital is taken to involve the patient being subject to a level of security that is excessive in the patient's case.
61. Subsection (5) of new section 271A provides that regulations may make provision requiring that a person meet criteria besides being a medical practitioner in order to prepare a report in support of a patient's excessive security appeal for the purposes of the new requirements introduced by section 14 of the Act. This applies both in relation to a patient making an application to the Tribunal in respect of detention in a state hospital (under section 264 of the 2003 Act) or another hospital (under section 268 of the 2003 Act).