



Mental Health (Scotland) Act 2015

2015 asp 9

PART 1

THE 2003 ACT

Orders regarding level of security

16 Orders relating to non-state hospitals

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 268 (detention in conditions of excessive security: hospitals other than state hospitals)—
 - (a) in subsection (1), the word “qualifying” in the first place where it occurs is repealed,
 - (b) in subsection (2), for the words from “detention” to “patient's case” there is substituted “ the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient ”,
 - (c) in subsection (5), for the words from “to the managers” to the end there is substituted “ of the name of the hospital so identified to the managers of the hospital in which the patient is detained ”,
 - (d) in subsection (6), the word “qualifying” in each place where it occurs is repealed,
 - (e) in subsection (10)—
 - (i) except in paragraph (e), the word “qualifying” in each place where it occurs is repealed,
 - (ii) in paragraph (e), for the words “qualifying hospital” there is substituted “ hospital in which the patient is detained ”,
 - (f) subsections (11) to (14) are repealed.
- (3) In section 269 (order under section 268: further provision)—
 - (a) in each of subsections (1) and (2), the word “qualifying” is repealed,
 - (b) in subsection (3), for the words from “detention” to “patient's case” there is substituted “ the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient ”,

Changes to legislation: There are currently no known outstanding effects for the Mental Health (Scotland) Act 2015, Section 16. (See end of Document for details)

- (c) in subsection (6), for the words from “to the managers” to the end there is substituted “ of the name of the hospital so identified to the managers of the hospital in which the patient is detained ”.
- (4) In section 271 (orders under sections 268 to 270: recall)—
 - (a) in subsection (1), the word “qualifying” is repealed,
 - (b) in subsection (2)(a), for the words from “detention” to “patient's case” there is substituted “ the test specified in regulations made under section 271A(2) of this Act is not met in relation to the patient ”.
- (5) After section 271 there is inserted—

“Process for orders: further provision

271A Regulation-making powers

- (1) A hospital is a “qualifying hospital” for the purposes of sections 268 to 271 of this Act if—
 - (a) it is not a state hospital, and
 - (b) it is specified, or is of a description specified, in regulations.
- (2) Regulations may specify the test for the purposes of sections 268(2), 269(3) and 271(2)(a) of this Act.
- (3) Regulations under subsection (2) above specifying the test—
 - (a) must include as a requirement for the test to be met in relation to a patient that the Tribunal be satisfied that detention of the patient in the hospital in which the patient is being detained involves the patient being subject to a level of security that is excessive in the patient's case, and
 - (b) may include further requirements for the test to be met in relation to a patient.
- (4) Regulations may make provision about when, for the purposes of—
 - (a) any regulations made under subsection (2) above, and
 - (b) sections 268 to 271 of this Act,
 a patient's detention in a hospital is to be taken to involve the patient being subject to a level of security that is excessive in the patient's case.
- (5) Regulations may modify sections 264 and 268 of this Act so as to provide that a person must meet criteria besides being a medical practitioner in order to prepare a report for the purpose of subsection (7A) in each of those sections.”.
- (6) In section 273 (interpretation of Chapter), for the definition of “relevant patient” there is substituted—
 - ““relevant patient” means a patient whose detention in hospital is authorised by—
 - (a) if the patient is also subject to a restriction order, a compulsion order,
 - (b) a hospital direction, or
 - (c) a transfer for treatment direction.”.

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(7) In section 326 (orders, regulations and rules), in subsection (4)(c), for the words “268(11) to (14)” there is substituted “ 271A ”.

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Commencement Information

I1 S. 16 in force at 16.11.2015 by [S.S.I. 2015/361](#), **art. 2**

Changes to legislation:

There are currently no known outstanding effects for the Mental Health (Scotland) Act 2015, Section 16.