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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 361 (C. 46)**

**MENTAL HEALTH**

**The Mental Health (Scotland) Act 2015 (Commencement  
No. 1, Transitional and Saving Provisions) Order 2015**

*Made* - - - - 29th October 2015  
*Laid before the Scottish  
Parliament* - - - - 2nd November 2015  
*Coming into force* - - 16th November 2015

The Scottish Ministers make the following Order in exercise of the powers conferred by section 61(2) and (3) of the Mental Health (Scotland) Act 2015(1).

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Mental Health (Scotland) Act 2015 (Commencement No. 1, Transitional and Saving Provisions) Order 2015 and comes into force on 16th November 2015.

(2) In this Order—

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003(2);

“the Act” means the Mental Health (Scotland) Act 2015;

“the appointed day” means the day appointed by article 2(1); and

“the Tribunal” means the Mental Health Tribunal for Scotland established under section 21 of the 2003 Act.

**Commencement of provisions**

2.—(1) 16th November 2015 is the day appointed for the provisions of the Act specified in paragraph (2) to come into force.

(2) The provisions are—

(a) section 14 (requirement for medical report);

(b) section 15 (process for enforcement of orders);

(c) section 16 (orders relating to non-state hospitals); and

(d) section 18 (meaning of hospital in sections 264 to 273 of the 2003 Act).

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(1) 2015 asp 9.

(2) 2003 asp 13.

### **Transitional provision**

3. The commencement of section 14 of the Act (requirement for medical report) is of no effect in relation to an application to the Tribunal made under section 264(2) of the 2003 Act (detention in conditions of excessive security: state hospitals) before the appointed day.

### **Saving provisions**

4.—(1) Where paragraph (2) applies, section 266 of the 2003 Act (order under section 265: further provision) will continue to have effect in relation to an order made under section 265 of that Act (order under section 264: further provision) on and after the appointed day as it had effect before that day despite its repeal by section 15 of the Act (process for enforcement of orders).

(2) This paragraph applies where the order under section 265 of the 2003 Act was made pursuant to an order made under section 264(2) of that Act in respect of an application which was made to the Tribunal under that section before the appointed day.

5.—(1) Where paragraph 2 applies, the provisions of the 2003 Act specified in paragraph (3) will continue to have effect on and after the appointed day as they had effect immediately before that day despite the amendment of those sections by section 15 of the Act.

(2) This paragraph applies to any order made under section 266 of the 2003 Act before, on or after the appointed day.

(3) The provisions are—

- (a) section 267 (orders under sections 264 to 266: recall); and
- (b) section 272 (proceedings for specific performance of statutory duty).

### **Making of an application**

6. For the purposes of articles 3 and 4, an application is to be taken as having been made before the appointed day only where it is received by the Tribunal before that day.

St Andrew's House,  
Edinburgh  
29th October 2015

*JAMIE HEPBURN*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force certain provisions of the Mental Health (Scotland) Act 2015 (“the Act”). Article 2 provides that the appointed day for the purposes of this Order is 16th November 2015.

The provisions which are brought into force by article 2 relate to amendments to Chapter 3 of Part 17 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ([asp 13](#)) (“the 2003 Act”), in relation to detention in conditions of excessive security.

Section 14 of the Act introduces a requirement for all applications to the Mental Health Tribunal for Scotland in relation to detention in conditions of excessive security to be accompanied by a supportive medical report. Section 15 of the Act repeals section 266 of the 2003 Act to remove the third-stage hearing where the Tribunal has found that a patient is being detained in a state hospital in conditions of excessive security, and makes consequential amendments. That section also repeals section 270 of the 2003 Act, which made equivalent provision for a third-stage hearing in relation to non-state hospital applications. Section 16 of the Act amends sections 268, 269 and 271 of the 2003 Act in relation to applications by patients detained in hospitals other than a state hospital, and introduces new powers (new section 271A of the 2003 Act) for Ministers to make provision by regulations in relation to such applications<sup>(3)</sup>. Section 18 of the Act provides that, for the purposes of Chapter 3 of Part 17 of the 2003 Act, references to a hospital may be read as a reference to a hospital unit.

Articles 3, 4 and 5 make transitional and saving provision to ensure that the requirement for a supportive medical report, introduced by section 14 of the Act, applies only to applications made on or after the appointed day; to retain the third-stage hearing in section 266 of the 2003 Act for applications made before that day; and to ensure that orders under section 266, whenever made, continue to be able to be recalled or enforced on and after the appointed day.

Article 6 sets out when an application is to be taken as having been made, for the purposes of the transitional and saving provisions.

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(3) The Mental Health (Detention in Conditions of Excessive Security) (Scotland) Regulations 2015 were laid before the Scottish Parliament in draft on 31st August 2015 and, subject to Parliamentary approval, are expected to come into force on 16th November 2015.