



# Mental Health (Care and Treatment) (Scotland) Act 2003

## 2003 asp 13

### PART 17 **S**

#### PATIENT REPRESENTATION ETC.

### CHAPTER 1 **S**

#### NAMED PERSON

#### *Meaning of “named person”*

#### **250** Nomination of named person **S**

- (1) Where a person who has attained the age of 16 years (a “nominator”) nominates in accordance with subsection (2) below another person who has attained that age to be the nominator’s named person, that person is, subject to subsections [F1(2A), (3) and (6)] below, the nominator’s named person.
- (2) A person is nominated in accordance with this subsection if—
  - (a) the nomination is signed by the nominator;
  - (b) the nominator’s signature is witnessed by a prescribed person;
  - (c) the prescribed person certifies that, in the opinion of the prescribed person, the nominator—
    - (i) understands the effect of nominating a person to be the nominator’s named person; and
    - (ii) has not been subjected to any undue influence in making the nomination.
- (2A) A nomination under subsection (1) above is valid only if—
  - (a) a docket to the nomination states that the person nominated has consented to the nomination,
  - (b) the docket is signed by the nominated person, F2...

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<sup>F3</sup>(c) .....

- (3) A nomination under subsection (1) above may be revoked by the nominator in accordance with subsection (4) below.
- (4) The nomination of a named person is revoked in accordance with this subsection if—
- (a) the revocation is signed by the nominator;
  - (b) the nominator’s signature is witnessed by a prescribed person;
  - (c) the prescribed person certifies that, in the opinion of the prescribed person, the nominator—
    - (i) understands the effect of revoking the appointment of a person as named person; and
    - (ii) has not been subjected to any undue influence in making the revocation.
- (5) The nomination of a named person shall be effective notwithstanding the nominator’s becoming, after making the nomination, incapable.
- (6) A person nominated under subsection (1) above [<sup>F4</sup>ceases] to be the nominator’s named person by giving notice to—
- (a) the nominator; and
  - (b) the local authority for the area in which the nominator resides, to that effect.
- (7) In this section—
- “incapable” means incapable by reason of mental disorder or of inability to communicate because of physical disability; but a person shall not fall within this definition by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise); and
- “prescribed person” means a person of a class prescribed by regulations.

#### Textual Amendments

- F1** Words in s. 250(1) substituted (5.5.2017 for specified purposes, 30.6.2017 for specified purposes) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 23(2)(a)**, 61(2); S.S.I. 2017/126, art. 2, sch.; S.S.I. 2017/197, art. 2, sch. (with art. 16(a))
- F2** Word in s. 250(2A) repealed (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\)](#), **ss. 37(2)(a)**, 59(1) (with s. 48(1)(c)(2)(c)(3)(b))
- F3** S. 250(2A)(c) repealed (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\)](#), **ss. 37(2)(b)**, 59(1) (with s. 48(1)(c)(2)(c)(3)(b))
- F4** Word in s. 250(6) substituted (5.5.2017 for specified purposes, 30.6.2017 for specified purposes) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 23(2)(c)**, 61(2); S.S.I. 2017/126, art. 2, sch.; S.S.I. 2017/197, art. 2, sch. (with art. 16(a))

#### Modifications etc. (not altering text)

- C1** S. 250(2)(3)-(5)(7) applied by S.S.I. 2008/356, reg. 8A(4) (as inserted (30.6.2017) by [The Mental Health \(Cross-border transfer patients subject to requirements other than detention\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/232\)](#), regs. 2, 8)
- C2** S. 250(2)(3)-(5)(7) applied by S.S.I. 2005/467, reg. 13A(4) (as inserted (30.6.2017) by [The Mental Health \(Cross-border transfer patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Amendment Regulations 2017 \(S.S.I. 2017/229\)](#), regs. 2, 16 (with reg. 4(1)))

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#### Commencement Information

- I1** S. 250 in force at 1.9.2004 for specified purposes by [S.S.I. 2004/367, art. 2, Sch. 1](#)  
**I2** S. 250 in force at 4.10.2004 in so far as not already in force by [S.S.I. 2004/367, art. 3, Sch. 2](#)

### <sup>F5</sup>251 **Named person where no person nominated or nominated person declines to act** **S**

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#### Textual Amendments

- F5** S. 251 repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 22\(2\), 61\(2\); S.S.I. 2017/197, art. 2, sch.](#) (with arts. 13-15)

### 252 **Named person in relation to child** **S**

- (1) The named person of a person who has not attained the age of 16 years (“the child”) shall be—
- (a) subject to subsection (2) below, in a case where [<sup>F6</sup>a relevant person] has parental rights and parental responsibilities in relation to the child, that person;
  - (b) in a case where the child is in the care of a local authority by virtue of a care order made under section 31 of the Children Act 1989 (c. 41), that authority; or
  - (c) in any other case, where the child’s primary carer has attained the age of 16 years, that person.
- (2) Subject to subsection (3) below, where two or more [<sup>F7</sup>relevant persons] have parental rights and parental responsibilities in relation to the child, the named person of the child shall be—
- (a) if those persons agree that one of them is to be the named person of the child, that person; or
  - (b) if those persons do not so agree, the one of them—
    - (i) who provides, on a regular basis, all, or most, of the care for, and support to, the child;
    - (ii) in a case where the child is in hospital, who provided all, or most, of that care for, and support to, the child before the child was admitted to hospital.
- (3) If—
- (a) one of the [<sup>F8</sup>relevant] persons who has parental rights and parental responsibilities in relation to the child is a local authority; and
  - (b) the local authority has those rights and responsibilities by virtue of an order under section 86(1) of the Children (Scotland) Act 1995 (c. 36) (orders transferring parental rights and parental responsibilities),
- the local authority shall be the child’s named person.
- (4) In this section—
- “parental responsibilities”, in relation to a child, has the meaning given by section 1(3) of the Children (Scotland) Act 1995 (c. 36); <sup>F9</sup>...

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“parental rights”, in relation to a child, has the meaning given by section 2(4) of that Act.

[<sup>F10</sup>; and

“relevant person” means—

- (a) a local authority; or
- (b) a person who has attained the age of 16 years.]

#### Textual Amendments

- F6** Words in s. 252(1)(a) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(20)(a)**
- F7** Words in s. 252(2) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(20)(b)**
- F8** Word in s. 252(3) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(20)(c)**
- F9** Word in s. 252(4) omitted (27.9.2005) by virtue of [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 32(20)(d)(i)**
- F10** Words in s. 252(4) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **Sch. 1 para. 32(20)(d)(ii)**

#### Commencement Information

- I3** S. 252 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

### <sup>F11</sup>253 Declaration in relation to named person **S**

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#### Textual Amendments

- F11** [S. 253](#) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 22(2)**, 61(2); [S.S.I. 2017/197](#), art. 2, **sch.** (with arts. 13-15)

### 254 Meaning of “nearest relative” **S**

- (1) In this Act, “nearest relative”, in relation to a person (the “relevant person”), means—
- (a) subject to subsection (3) below, in a case where only one person falls within the list set out in subsection (2) below, that person;
  - (b) subject to subsections (3) and (4) below, in a case where two or more persons fall within that list, the person falling within the paragraph first appearing in the list set out in subsection (2) below.
- (2) The list mentioned in subsection (1) above is—
- (a) the relevant person’s spouse; [<sup>F12</sup>or civil partner]
  - (b) a person such as is mentioned in subsection (7) below;
  - (c) the relevant person’s child;
  - (d) the relevant person’s parent;
  - (e) the relevant person’s brother or sister;
  - (f) the relevant person’s grandparent;

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- (g) the relevant person’s grandchild;
  - (h) the relevant person’s uncle or aunt;
  - (i) the relevant person’s niece or nephew;
  - (j) the person mentioned in subsection (8) below.
- (3) If the relevant person’s spouse<sup>F13</sup> or civil partner]—
- (a) is permanently separated (either by agreement or under an order of a court) from the relevant person; or
  - (b) has deserted, or has been deserted by, the relevant person and the desertion continues,
- subsection (2)(a) above shall be disregarded for the purposes of subsection (1) above.
- (4) Where two or more persons fall within the paragraph first appearing on the list set out in subsection (2) above, the nearest relative shall be—
- (a) if those persons agree that one of them should be the nearest relative, that person; or
  - (b) if those persons do not so agree, the person determined in accordance with the following rules—
    - (i) brothers and sisters of the whole blood shall be preferred over brothers and sisters of the half-blood; and
    - (ii) the elder or eldest, as the case may be, shall be preferred.
- (5) A relevant person’s nearest relative may decline to be the named person of the relevant person by giving notice to—
- (a) the relevant person; and
  - (b) the local authority for the area in which the relevant person resides,
- to that effect.
- (6) For the purposes of subsection (2) above—
- (a) a relationship of the half-blood shall, subject to subsection (4)(b)(i) above, be treated as a relationship of the whole blood;
  - (b) the stepchild of a person shall be treated as the child of that person;
  - (c) if the relevant person is ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man, any person who is not so resident shall be disregarded; and
  - (d) any person who is under 16 years of age shall be disregarded.
- (7) The person referred to in subsection (2)(b) above is a person who—
- (a) is living with the relevant person—
    - (i) as husband and wife; or
    - (ii) in a relationship which has the characteristics of the relationship between <sup>F14</sup>civil partners]; and
  - (b) has been living with the relevant person for a period of at least 6 months or, if the relevant person is for the time being in hospital<sup>F15</sup> or in a care home service], had been living with the relevant person for such period when the relevant person was admitted to hospital<sup>F16</sup> or to a care home service].
- (8) The person referred to in subsection (2)(j) above is a person who—
- (a) is living with the relevant person and has been living with the relevant person for a period of at least 5 years; or

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- (b) if the relevant person is in hospital<sup>F17</sup> or in a care home service], had been living with the relevant person for such period when the relevant person was admitted to hospital<sup>F18</sup> or to a care home service].

**Textual Amendments**

- F12** Words in s. 254(2)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 69\(2\)](#); [S.S.I. 2005/604, art. 2\(c\)](#)
- F13** Words in s. 254(3) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 69\(3\)](#); [S.S.I. 2005/604, art. 2\(c\)](#)
- F14** Words in s. 254(7)(a)(ii) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 69\(4\)](#); [S.S.I. 2005/604, art. 2\(c\)](#)
- F15** Words in s. 254(7)(b) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\), art. 1, sch. 1 para. 32\(21\)\(a\)\(i\)](#)
- F16** Words in s. 254(7)(b) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\), art. 1, sch. 1 para. 32\(21\)\(a\)\(ii\)](#)
- F17** Words in s. 254(8)(b) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\), art. 1, sch. 1 para. 32\(21\)\(b\)\(i\)](#)
- F18** Words in s. 254(8)(b) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\), art. 1, sch. 1 para. 32\(21\)\(b\)\(ii\)](#)

**Commencement Information**

- I4** S. 254 in force at 5.10.2005 by [S.S.I. 2005/161, art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375, art. 2](#) and as amended (22.9.2005) by [S.S.I. 2005/459, art. 2](#))

*Mental health officer’s duties etc.*

**255 Named person: mental health officer’s duties etc. S**

- (1) Subsection (2) below applies where—
  - (a) a mental health officer is discharging any function by virtue of this Act or the 1995 Act in relation to a patient; and
  - (b) it is necessary for the purposes of the discharge of the function to establish whether the patient has a named person.
- (2) The mental health officer shall take such steps as are reasonably practicable—
  - (a) to establish whether the patient has a named person; and
  - (b) if so, to ascertain who that person is.

<sup>F19</sup>(3) .....

<sup>F19</sup>(4) .....

<sup>F19</sup>(5) .....

- (6) Where by virtue of subsection (2) above—
  - (a) the mental health officer—
    - (i) establishes that the patient has a named person; and
    - (ii) ascertains the name of that person (“the apparent named person”); but
  - (b) the mental health officer considers that it is inappropriate for the apparent named person to be the patient’s named person,

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the mental health officer shall apply to the Tribunal for an order under section 257 of this Act.

(7) Where—

- (a) a mental health officer is discharging any function by virtue of this Act in relation to a patient; and
- (b) it appears to the mental health officer—
  - <sup>F20</sup>(i) .....
  - (ii) that the patient has a named person (“the apparent named person”) but the mental health officer considers that it is inappropriate for the apparent named person to be the patient’s named person,the mental health officer may apply to the Tribunal for an order under section 257 of this Act.

**Textual Amendments**

**F19** S. 255(3)-(5) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 24(2)(a)**, 61(2); S.S.I. 2017/197, **art. 2**, sch.

**F20** S. 255(7)(b)(i) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 24(2)(b)**, 61(2); S.S.I. 2017/197, **art. 2**, sch.

**Commencement Information**

**I5** S. 255 in force at 5.10.2005 by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

*Applications to Tribunal by patient etc.*

**256 Named person: application by patient etc. S**

(1) Where—

- <sup>F21</sup>(a) .....
  - (b) [<sup>F22</sup>a person mentioned in subsection (2) below (“the applicant”)] considers that though the patient has a named person it is inappropriate that that person be the patient’s named person; or
  - (c) circumstances of such description as may be prescribed by regulations exist,
- the applicant may apply to the Tribunal for an order under section 257 of this Act in relation to the patient.

(2) Those persons are—

- (a) the patient;
- (b) the patient’s responsible medical officer;
- (c) if the patient is a child, any person who has parental responsibilities in relation to the patient;
- (d) if the patient is in hospital, the managers of the hospital;
- (e) any welfare attorney of the patient;
- (f) any guardian of the patient;
- (g) any relative of the patient; and
- (h) any other person having an interest in the welfare of the patient.

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- (3) In subsection (2)(c) above, “child” and “parental responsibilities” have the same meanings as they have in Part I of the Children (Scotland) Act 1995 (c. 36).

#### Textual Amendments

- F21** S. 256(1)(a) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 24(3)(a)**, 61(2); S.S.I. 2017/197, art. 2, sch.
- F22** Words in s. 256(1)(b) substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 24(3)(b)**, 61(2); S.S.I. 2017/197, art. 2, sch.

#### Commencement Information

- I6** S. 256 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**
- I7** S. 256 in force at 5.10.2005 in so far as not already in force by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

### *Tribunal's powers*

#### **257**     **Named person: Tribunal's powers** **S**

<sup>F23</sup>(1) .....

(2) Where—

- (a) an application is made under section 255(6) or (7)(b)(ii) or 256(1)(b) of this Act; and
- (b) the Tribunal is satisfied that it is inappropriate for the named person (“the acting named person”) to be the patient’s named person,

the Tribunal may, subject to subsection (4) below, make an order [<sup>F24</sup>as allowed by subsection (3A)].

- (3) Where an application is made under section 256(1)(c) of this Act, the Tribunal may, subject to subsection (4) [<sup>F25</sup>or (5)] below, make such order as it thinks fit.

[<sup>F26</sup>(3A) For the purpose of subsection (2), this subsection allows an order—

- (a) in any case, to declare that the acting named person is not the named person,
- (b) if the patient has not attained the age of 16 years, to appoint the person specified in the order to be the patient's named person in place of the acting named person.]

(4) It shall not be competent for the Tribunal to make an order under this section appointing a person who has not attained the age of 16 years to be a patient’s named person.

[<sup>F27</sup>(5) An order under this section appointing a person to be a patient's named person may be made only if—

- (a) a document, signed by the person, states that the person has consented to being the patient's named person, and
- (b) the person's signature is witnessed by someone.

(6) A person appointed by an order under this section to be a patient's named person ceases to be the patient's named person by giving notice to that effect to—

- (a) the Tribunal,



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- (b) the patient, and
- (c) the local authority for the area in which the patient resides.]

#### Textual Amendments

- F23** S. 257(1) repealed (30.6.2017) by Mental Health (Scotland) Act 2015 (asp 9), ss. 24(4)(a), 61(2); S.S.I. 2017/197, art. 2, sch.
- F24** Words in s. 257(2) substituted (30.6.2017) by Mental Health (Scotland) Act 2015 (asp 9), ss. 24(4)(b), 61(2); S.S.I. 2017/197, art. 2, sch.
- F25** Words in s. 257(3) inserted (30.6.2017) by Mental Health (Scotland) Act 2015 (asp 9), ss. 23(3)(a), 61(2); S.S.I. 2017/197, art. 2, sch. (with art. 16(b))
- F26** S. 257(3A) inserted (30.6.2017) by Mental Health (Scotland) Act 2015 (asp 9), ss. 24(4)(c), 61(2); S.S.I. 2017/197, art. 2, sch.
- F27** S. 257(5)(6) inserted (30.6.2017) by Mental Health (Scotland) Act 2015 (asp 9), ss. 23(3)(b), 61(2); S.S.I. 2017/197, art. 2, sch. (with art. 16(b))

#### Commencement Information

- I8** S. 257 in force at 5.10.2005 by S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

*[<sup>F28</sup> Ability to act if no named person*

#### Textual Amendments

- F28** S. 257A and cross-heading inserted (30.6.2017) by Mental Health (Scotland) Act 2015 (asp 9), ss. 25(2), 61(2); S.S.I. 2017/197, art. 2, sch.

### 257A Ability to act if no named person **S**

- (1) This section applies if—
  - (a) a patient does not have a named person,
  - (b) the patient has attained the age of 16 years, and
  - (c) the patient is incapable in relation to a decision as to whether to initiate an application or appeal in the patient's case.
- (2) In subsection (1)(c) above, “incapable” has the same meaning as in section 250 of this Act.
- (3) Each of the persons listed in subsection (9)(a) to (d) below has authority to initiate an application or appeal that may be made by the patient under section 50(1), 99(1), 100(2), 120(2), 125(2), 126(2), 163(1), 164(2), [<sup>F29</sup>164A,] 192(2), 201(1), 204(1), 214(2), 219(2), 220(2), 264(2), 268(2), 320(2), 321(1) or 322(2) of this Act.
- (4) Each of the persons listed in subsection (9)(a) and (b) below has authority to obtain any notice or information that is to be provided under section 54(3), 60(1), 87(2)(c), 124(4) or (6), 127(7), 128(3), 129(3) or (4), 153(2)(c), 200(3), 218(4), (6) or (10)(b), 224(8), 225(3) or 226(3) of this Act.
- (5) The reference in subsection (3) above to section 264(2), 268(2), 320(2), 321(1) or 322(2) of this Act does not apply in relation to a guardian or a welfare attorney of

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the patient (as that person is already entitled to make an application or appeal under that section).

- (6) In the application of subsection (4) above—
- (a) the reference to section 87(2)(c) or 153(2)(c) relates only to notice of the determination mentioned in that section (and not also to a copy of the record mentioned in that section),
  - (b) the reference to section 128(3) or 129(4) relates to a responsible medical officer's reasons only if that officer is satisfied that it is appropriate to give notice of them to a guardian or a welfare attorney of the patient (having regard to the need to ensure the patient's wellbeing and confidentiality).
- (7) Neither of the persons listed in subsection (9)(c) or (d) below has authority to act in relation to a patient by virtue of this section if the patient has made a written declaration precluding the person (or all persons) from so acting.
- (8) Subsections (2) to (5) and (7) of section 250 of this Act apply to a declaration mentioned in subsection (7) above as they apply to a nomination to which subsection (1) of that section relates (with that section to be read accordingly).
- (9) The listed persons are—
- (a) any guardian of the patient,
  - (b) any welfare attorney of the patient,
  - (c) the patient's primary carer (if any),
  - (d) the patient's nearest relative.]

#### Textual Amendments

- F29** Word in s. 257A(3) inserted (30.11.2020) by [Management of Offenders \(Scotland\) Act 2019 \(asp 14\)](#), ss. [26\(6\)](#), [63\(2\)](#); S.S.I. 2020/245, reg. 2, sch. (with reg. 3)

#### Modifications etc. (not altering text)

- C3** S. 257A(5) excluded by [S.S.I. 2005/467](#) regs. 14(4), 15(3) (as inserted (30.6.2017) by [The Mental Health \(Cross-border transfer patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Amendment Regulations 2017 \(S.S.I. 2017/229\)](#), [regs. 2](#), [18\(4\)](#), [19\(3\)](#) (with reg. 4(1)))
- C4** S. 257A(5) excluded by [S.S.I. 2008/356](#), [reg. 9\(4\)](#) (as inserted (30.6.2017) by [The Mental Health \(Cross-border transfer: patients subject to requirements other than detention\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/232\)](#), regs. 1. 9(1))

### Interpretation of Chapter

#### 258 Interpretation of Chapter **S**

In this Chapter, other than section 252, “person” means a natural person.

#### Commencement Information

- I9** S. 258 in force at 1.9.2004 by [S.S.I. 2004/367](#), art. 2, [Sch. 1](#)

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## CHAPTER 2 **S**

### ADVOCACY ETC.

#### *Advocacy*

#### **259 Advocacy **S****

- (1) Every person with a mental disorder shall have a right of access to independent advocacy; and accordingly it is the duty of—
  - (a) each local authority, in collaboration with the (or each) relevant Health Board; and
  - (b) each Health Board, in collaboration with the (or each) relevant local authority, to secure the availability, to persons in its area who have a mental disorder, of independent advocacy services and to take appropriate steps to ensure that those persons have the opportunity of making use of those services.
- (2) Each relevant Health Board and local authority shall, for the purposes of subsection (1) above, collaborate with the local authority or, as the case may be, Health Board in relation to which it is the relevant Board or authority.
- (3) For the purposes of subsections (1) and (2) above—
  - (a) a Health Board is, in relation to a local authority, a “relevant” Health Board if its area or part of its area is the same as or is included in the area of the local authority; and
  - (b) a local authority is, in relation to a Health Board, a “relevant” local authority if its area or part of its area is the same as or is included in the area of the Health Board.
- (4) In subsection (1) above, “advocacy services” are services of support and representation made available for the purpose of enabling the person to whom they are available to have as much control of, or capacity to influence, that person’s care and welfare as is, in the circumstances, appropriate.
- (5) For the purposes of subsection (1) above, advocacy services are “independent” if they are to be provided by a person who is none of the following—
  - (a) a local authority;
  - (b) a Health Board;
  - (c) a National Health Service trust;
  - (d) a member of—
    - (i) the local authority;
    - (ii) the Health Board;
    - (iii) a National Health Service trust,in the area of which the person to whom those services are made available is to be provided with them;
  - (e) a person who—
    - (i) in pursuance of arrangements made between that person and a Health Board, is giving medical treatment to;
    - (ii) in pursuance of those arrangements, is providing, under the National Health Service (Scotland) Act 1978 (c. 29), treatment, care or services for; or

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- (iii) in pursuance of arrangements made between that person and a local authority, is providing, under Part II of the Social Work (Scotland) Act 1968 (c. 49) (promotion of social welfare) or any of the enactments specified in section 5(1B) of that Act, services for,
    - the person to whom the advocacy services are made available;
  - (f) in relation to a patient detained in a state hospital or a person who (by virtue of any of the means specified in subsection (11)(b) below) is no longer detained there, the State Hospitals Board for Scotland or a member of that Board.
- (6) In subsection (5)(d) above the reference to the area of a National Health Service trust is a reference to the Health Board area in which the trust discharges its functions.
- (7) It is the duty of the State Hospitals Board for Scotland (the “State Hospitals Board”) to secure the availability to persons who are patients detained in a state hospital of the services referred to in subsection (1) above and, in relation to those persons, to take the steps there referred to.
- (8) It is the duty of—
- (a) the State Hospitals Board, in collaboration with each relevant local authority and Health Board; and
  - (b) each relevant local authority and Health Board, in collaboration with the State Hospitals Board,
- to secure the availability to relevant persons of the services referred to in subsection (1) above, and, in relation to those persons, to take the steps there referred to.
- (9) Each relevant local authority and Health Board shall, for the purposes of subsection (8) (a) above, collaborate with the State Hospitals Board and with each other.
- (10) The State Hospitals Board shall, for the purposes of subsection (8)(b) above, collaborate with each relevant local authority and Health Board.
- (11) For the purposes of subsections (8) to (10) above—
- (a) a local authority or Health Board is a relevant local authority or, as the case may be, Health Board if there is residing in its area a relevant person;
  - (b) a relevant person is a person with a mental disorder who, having been detained as a patient in a state hospital, is (by virtue of section 127 or 193(7) of this Act) no longer detained there.

#### Commencement Information

**I10** S. 259 in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

### [<sup>F30</sup>259A Information gathering **S**

- (1) Each of the bodies mentioned in subsection (2) below must give the Commission such information as the Commission may from time to time seek on how the body—
- (a) has, during a period of at least 2 years specified by the Commission, been exercising the functions conferred on the body by section 259 of this Act, and
  - (b) intends, during a period of at least 2 years specified by the Commission, to exercise the functions conferred on the body by section 259 of this Act.

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- (2) The bodies are—
- (a) a local authority,
  - (b) a Health Board,
  - (c) the State Hospitals Board for Scotland.]

#### Textual Amendments

**F30** S. 259A inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. 27(2), 61(2); S.S.I. 2017/197, art. 2, sch.

### Information

#### 260 Provision of information to patient **S**

- (1) This section applies where a patient—
- (a) is detained in hospital by virtue of—
    - (i) this Act; or
    - (ii) the 1995 Act; or
  - (b) though not detained in hospital, is subject to—
    - (i) an emergency detention certificate;
    - (ii) a short-term detention certificate;
    - (iii) a compulsory treatment order;
    - (iv) an interim compulsory treatment order;
    - (v) an assessment order;
    - (vi) a treatment order;
    - (vii) a hospital direction;
    - (viii) a transfer for treatment direction;
    - (ix) an interim compulsion order; or
    - (x) a compulsion order.
- (2) The appropriate person shall—
- (a) take all reasonable steps—
    - (i) to ensure that the patient understands the relevant matters at each of the times mentioned in subsection (3) below;
    - (ii) to ensure that the patient is supplied with material appropriate to the patient’s needs (and in a form that is appropriate to those needs and permanent) from which the patient may refresh the patient’s understanding of those matters; and
    - (iii) to inform the patient of the availability under section 259 of this Act of independent advocacy services at each of those times; and
  - (b) take appropriate steps to ensure that the patient has the opportunity of making use of those services.
- (3) Those times are—
- (a) as soon as practicable after—
    - (i) where the patient is detained in hospital, the beginning of such detention; or

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- (ii) where the patient is not so detained, the making of the order;
  - (b) as soon as practicable after any occasion on which the patient reasonably requests to be informed of those matters; and
  - (c) such other times as may be prescribed by regulations.
- (4) Where material is supplied to the patient under subsection (2)(a)(ii) above, the appropriate person shall, as soon as practicable after such material is supplied, take all reasonable steps to ensure that the patient’s named person is supplied with a copy of such material in a form that is appropriate to the person’s needs.
- (5) In this section—
- “the appropriate person” means—
- (a) where the patient is detained in hospital, the managers of the hospital;
  - (b) where by virtue of a certificate granted under any provision of this Act, the authorisation to detain the patient in a hospital is suspended, the managers of the hospital in which, but for the certificate, the patient would be authorised to be detained;
  - (c) in any other case, the managers of the hospital specified in the order; and
- “the relevant matters” means—
- (a) the provision of this Act or the 1995 Act by virtue of which—
    - (i) the patient is being detained; or
    - (ii) the order has effect;
  - (b) the consequences of the operation of that provision;
  - (c) the powers that the patient’s responsible medical officer and the Tribunal each has in relation to revoking that provision;
  - (d) any right to make an application, or appeal, to the Tribunal that the patient has by virtue of that provision;
  - (e) the powers exercisable by the Tribunal in the event of any such right being exercised;
  - (f) how the patient may exercise any such right;
  - (g) the functions that the Commission has that appear to be relevant to the patient’s case;
  - (h) how the patient may obtain legal assistance as respects any such right.

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**Modifications etc. (not altering text)**

- C5** S. 260 modified (5.10.2005) by [Mental Health \(Cross-border transfer; patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/467\)](#), regs. 1(1), **43** (with reg. 2)
- C6** S. 260 modified (3.11.2008) by [Mental Health \(England and Wales Cross-border transfer: patients subject to requirements other than detention\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/356\)](#), regs. 1(1), **30** (with reg. 2)
- C7** S. 260(3) applied (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Transitional and Savings Provisions\) Order 2005 \(S.S.I. 2005/452\)](#), arts. 1, **40**

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**Commencement Information**

- I11** S. 260 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, **Sch. 1**
- I12** S. 260 in force at 5.10.2005 in so far as not already in force by [S.S.I. 2005/161](#), **art. 3** (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

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## 261 Provision of assistance to patient with communication difficulties **S**

- (1) This section applies where—
- (a) a patient is detained in hospital by virtue of—
    - (i) this Act; or
    - (ii) the 1995 Act; or
  - (b) though not detained in hospital, a patient is subject to—
    - (i) an emergency detention certificate;
    - (ii) a short-term detention certificate;
    - (iii) a compulsory treatment order;
    - (iv) an interim compulsory treatment order;
    - (v) an assessment order;
    - (vi) a treatment order;
    - (vii) a hospital direction;
    - (viii) a transfer for treatment direction;
    - (ix) an interim compulsion order; or
    - (x) a compulsion order,and the patient has difficulty in communicating or generally communicates in a language other than English.
- (2) The appropriate person shall take all reasonable steps to secure that, for the purpose of enabling the patient to communicate during each of the events mentioned in subsection (3) below—
- (a) arrangements appropriate to the patient’s needs are made; or
  - (b) the patient is provided with assistance, or material, appropriate to the patient’s needs.
- (3) Those events are—
- (a) any medical examination of the patient carried out for the purpose of assessing the patient’s mental disorder;
  - (b) any review under this Act or the 1995 Act of the patient’s detention; or
  - (c) any proceedings before the Tribunal relating to the patient.
- (4) As soon as practicable after taking any steps under subsection (2) above, the appropriate person shall make a written record of the steps.
- (5) In this section “the appropriate person” has the meaning given by section 260(5) of this Act.

### Modifications etc. (not altering text)

- C8** S. 261 modified (5.10.2005) by [Mental Health \(Cross-border transfer; patients subject to detention requirement or otherwise in hospital\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/467\)](#), regs. 1(1), **44** (with reg. 2)
- C9** S. 261 modified (3.11.2008) by [Mental Health \(England and Wales Cross-border transfer: patients subject to requirements other than detention\) \(Scotland\) Regulations 2008 \(S.S.I. 2008/356\)](#), regs. 1(1), **31** (with reg. 2)

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### Commencement Information

**I13** S. 261 in force at 5.10.2005 by [S.S.I. 2005/161](#), [art. 3](#) (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

## [<sup>F31</sup>261A Help with communication at medical examination etc. **S**

- (1) Subsection (2) below applies where—
  - (a) a medical examination or interview referred to in subsection (4)(a) or (b) below is to be carried out, and
  - (b) the subject of it—
    - (i) has difficulty in communicating, or
    - (ii) generally communicates in a language other than English.
- (2) The appropriate person must take all reasonable steps to secure that, for the purpose of enabling the subject of the medical examination or interview to communicate during it—
  - (a) arrangements appropriate to the subject's needs are made, or
  - (b) the subject is provided with assistance, or material, appropriate to those needs.
- (3) As soon as practicable after taking any steps under subsection (2) above, the appropriate person must make a written record of the steps.
- (4) This subsection refers to—
  - (a) a medical examination by virtue of section 36(1)(a), 44(1)(a), 57(2) or 136(2) of this Act,
  - (b) an interview by virtue of—
    - (i) section 45(1)(a) or 61(2)(a) of this Act, or
    - (ii) section 57C(2)(a) or 59B(2)(a) of the 1995 Act.
- (5) In subsections (2) and (3) above, “the appropriate person” means—
  - (a) in relation to a medical examination by virtue of section 136(2) of this Act, the Scottish Ministers,
  - (b) in relation to a medical examination by virtue of any of the other sections of this Act mentioned in subsection (4)(a) above—
    - (i) if it is to be carried out at a hospital, the managers of the hospital,
    - (ii) if it is to be carried out elsewhere, the medical practitioner carrying it out,
  - (c) in relation to an interview referred to in subsection (4)(b) above—
    - (i) if it is to be carried out at a hospital, the managers of the hospital,
    - (ii) if it is to be carried out elsewhere, the mental health officer carrying it out.]

### Textual Amendments

**F31** S. 261A inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 28\(2\)](#), 61(2); [S.S.I. 2017/197](#), art. 2, sch.



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### Access to medical practitioner

## 262 Access to medical practitioner for purposes of medical examination **S**

- (1) This section applies where a patient is detained in hospital by virtue of—
  - (a) this Act; or
  - (b) the 1995 Act.
- (2) A duly authorised medical practitioner may, for any of the purposes mentioned in subsection (3) below, visit the patient at any reasonable hour and carry out a medical examination of the patient in private.
- (3) Those purposes are—
  - (a) advising the patient or, as the case may be, the patient’s named person about the making of applications to the Tribunal in respect of the patient under this Act; and
  - (b) providing to the patient or, as the case may be, the patient’s named person information as respects the condition of the patient for the purpose of—
    - (i) any such application (or proposed application); or
    - (ii) any other proceedings before the Tribunal in respect of the patient in which the patient or, as the case may be, the patient’s named person is taking part (or considering whether to take part).
- (4) For the purposes of subsection (2) above and subject to subsection (5) below, a medical practitioner is duly authorised if authorised for the purposes of this section by—
  - (a) the patient; or
  - (b) the patient’s named person.
- (5) Authorisation given for the purposes of this section by the patient’s named person may be rescinded by the patient at any time when the patient is not incapable.
- (6) In subsection (5) above, “incapable” has the same meaning as in section 250(7) of this Act.

#### Commencement Information

**I14** S. 262 in force at 5.10.2005 by S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

## 263 Inspection of records by medical practitioner **S**

- (1) A duly authorised medical practitioner may, for any of the purposes mentioned in subsection (3) below, require any person holding records relating to—
  - (a) the detention of; or
  - (b) medical treatment given at any time to,a patient whose detention in hospital is authorised by virtue of this Act or the 1995 Act to produce them for inspection by the medical practitioner.
- (2) A duly authorised medical practitioner may, for any of the purposes mentioned in subsection (3) below, require any person holding records relating to medical treatment given at any time to a patient who is subject to—
  - (a) a compulsory treatment order; or

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- (b) a compulsion order,  
that does not authorise the detention of the patient in hospital to produce them for inspection by the medical practitioner.
- (3) Those purposes are—
- (a) advising the patient or, as the case may be, the patient’s named person about the making of applications to the Tribunal in respect of the patient under this Act;
  - (b) providing to the patient or, as the case may be, the patient’s named person information as respects the condition of the patient for the purpose of—
    - (i) any such application (or proposed application); or
    - (ii) any other proceedings before the Tribunal in respect of the patient in which the patient or, as the case may be, the patient’s named person is taking part (or considering whether to take part).
- (4) For the purposes of subsections (1) and (2) above and subject to subsection (5) below, a medical practitioner is duly authorised if authorised for the purposes of this section by—
- (a) the patient; or
  - (b) the patient’s named person.
- (5) Authorisation given for the purposes of this section by the patient’s named person may be rescinded by the patient at any time when the patient is not incapable.
- (6) In subsection (5) above, “incapable” has the same meaning as in section 250(7) of this Act.

#### Commencement Information

**I15** S. 263 in force at 5.10.2005 by S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

## CHAPTER 3 **S**

### DETENTION IN CONDITIONS OF EXCESSIVE SECURITY

#### *State hospitals*

#### **264 Detention in conditions of excessive security: state hospitals **S****

- (1) This section applies where a patient’s detention in a state hospital is authorised by—
- (a) a compulsory treatment order;
  - (b) a compulsion order;
  - (c) a hospital direction; or
  - (d) a transfer for treatment direction;
- and whether or not a certificate under section 127(1) (either as enacted or as applied by section 179(1) of this Act) or 224(2) of this Act has effect in relation to the patient.
- (2) On the application of any of the persons mentioned in subsection (6) below, the Tribunal may, if satisfied that the patient does not require to be detained under

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conditions of special security that can be provided only in a state hospital, make an order—

- (a) declaring that the patient is being detained in conditions of excessive security; and
  - (b) specifying a period, not exceeding 3 months and beginning with the making of the order, during which the duties under subsections (3) to (5) below shall be performed.
- (3) Where the Tribunal makes an order under subsection (2) above in respect of a relevant patient, the relevant Health Board shall identify a hospital—
- (a) which is not a state hospital;
  - (b) which the Board and the Scottish Ministers, and its managers if they are not the Board, agree is a hospital in which the patient could be detained in appropriate conditions; and
  - (c) in which accommodation is available for the patient.
- (4) Where the Tribunal makes an order under subsection (2) above in respect of a patient who is not a relevant patient, the relevant Health Board shall identify a hospital—
- (a) which is not a state hospital;
  - (b) which the Board considers, and its managers if they are not the Board agree, is a hospital in which the patient could be detained in appropriate conditions; and
  - (c) in which accommodation is available for the patient.
- (5) Where the Tribunal makes an order under subsection (2) above in respect of a patient, the relevant Health Board shall, as soon as practicable after identifying a hospital under subsection (3) or, as the case may be, (4) above, give notice to the managers of the state hospital of the name of the hospital so identified.
- (6) The persons referred to in subsection (2) above are—
- (a) the patient;
  - (b) the patient's named person;
  - (c) any guardian of the patient;
  - (d) any welfare attorney of the patient; and
  - (e) the Commission.
- (7) An application may not be made under subsection (2) above—
- (a) if the compulsory treatment order that authorises the patient's detention in hospital has not been extended;
  - (b) during the period of 6 months beginning with the making of the compulsion order that authorises the patient's detention in hospital; or
  - (c) before the expiry of the period of 6 months beginning with the making of—
    - (i) the hospital direction; or
    - (ii) the transfer for treatment direction,that authorises the patient's detention in hospital.
- [<sup>F32</sup>(7A) An application may not be made under subsection (2) above unless it is accompanied by a report prepared by [<sup>F33</sup>an approved medical] practitioner which—
- (a) states that in the practitioner's opinion the patient does not require to be detained under conditions of special security that can be provided only in a state hospital, and
  - (b) sets out the practitioner's reasons for being of that opinion.]

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- (8) No more than one application may be made under subsection (2) above in respect of the same patient—
- (a) during the period of 12 months beginning with the day on which the order, or direction, authorising the patient’s detention in hospital is made;
  - (b) during any subsequent period of 12 months that begins with, or with an anniversary of, the expiry of the period mentioned in paragraph (a) above.
- (9) Before determining an application under subsection (2) above, the Tribunal shall—
- (a) afford the persons mentioned in subsection (10) below 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.
- (10) Those persons are—
- (a) the patient;
  - (b) the patient’s named person;
  - (c) the relevant Health Board;
  - (d) the patient’s responsible medical officer;
  - (e) the managers of the state hospital in which the patient is detained;
  - (f) the mental health officer;
  - (g) any guardian of the patient;
  - (h) any welfare attorney of the patient;
  - (i) any curator *ad litem* appointed by the Tribunal in respect of the patient;
  - (j) the Commission;
  - (k) in the case of a relevant patient, the Scottish Ministers; and
  - (l) any other person appearing to the Tribunal to have an interest in the application.

#### Textual Amendments

**F32** S. 264(7A) inserted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 14\(2\), 61\(2\)](#); [S.S.I. 2015/361, art. 2](#) (with arts. 3, 6)

**F33** Words in s. 264(7A) substituted (16.11.2015) by [The Mental Health \(Detention in Conditions of Excessive Security\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/364\), regs. 1, 3\(a\)](#)

#### Commencement Information

**I16** 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)

**I17** S. 264 in force at 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)

## 265 Order under section 264: further provision **S**

- (1) This section applies where—
- (a) an order is made under section 264(2) of this Act in respect of a patient; and
  - (b) the order is not recalled under section 267 of this Act;
- and whether or not a certificate under section 127(1) (either as enacted or as applied by section 179(1) of this Act) or 224(2) of this Act has effect in relation to the patient.

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*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Part 17 is up to date with all changes known to be in force on or before 27 June 2024. 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*

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- (2) If the relevant Health Board fails, during the period specified in the order, to give notice to the Tribunal that the patient has been transferred to another hospital, there shall be a hearing before the Tribunal.
- (3) Where such a hearing is held, the Tribunal may, if satisfied that the patient does not require to be detained under conditions of special security that can be provided only in a state hospital, make an order—
  - (a) declaring that the patient is being detained in conditions of excessive security; and
  - (b) specifying—
    - (i) a period of 28 days; or
    - (ii) such longer period not exceeding 3 months as the Tribunal thinks fit, beginning with the day on which the order is made during which the duties under subsections (4) to (6) below shall be performed.
- (4) Where the Tribunal makes an order under subsection (3) above in respect of a relevant patient, the relevant Health Board shall identify a hospital—
  - (a) which is not a state hospital;
  - (b) which the Board and the Scottish Ministers, and its managers if they are not the Board, agree is a hospital in which the patient could be detained in appropriate conditions; and
  - (c) in which accommodation is available for the patient.
- (5) Where the Tribunal makes an order under subsection (3) above in respect of a patient who is not a relevant patient, the relevant Health Board shall identify a hospital—
  - (a) which is not a state hospital;
  - (b) which the Board considers, and its managers if they are not the Board agree, is a hospital in which the patient could be detained in appropriate conditions; and
  - (c) in which accommodation is available for the patient.
- (6) Where the Tribunal makes an order under subsection (3) above in respect of a patient, the relevant Health Board shall, as soon as practicable after identifying a hospital under subsection (4) or, as the case may be, (5) above, give notice to the managers of the state hospital of the name of the hospital so identified.
- (7) Before making an order under subsection (3) above, the Tribunal shall afford the persons mentioned in section 264(10) of this Act the opportunity—
  - (a) of making representations (whether orally or in writing); and
  - (b) of leading, or producing, evidence.

**Commencement Information**

- I18** 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)
- I19** S. 265 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, Part 17 is up to date with all changes known to be in force on or before 27 June 2024. 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*

### Textual Amendments

**F34** S. 266 repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 15(2)**, 61(2); S.S.I. 2015/361, art. 2 (with arts. 4-6)

## 267 <sup>[F35]</sup> Order under section 264 or 265: recall **S**

- (1) This section applies where an order is made under section 264(2) [<sup>F36</sup>or 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) [<sup>F37</sup>or 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—
  - (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

**F35** 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)

**F36** 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)

**F37** 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

**I20** 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)

**I21** S. 267 in force at 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)

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*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Part 17 is up to date with all changes known to be in force on or before 27 June 2024. 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*

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### Other hospitals

## 268 Detention in conditions of excessive security: hospitals other than state hospitals **S**

- (1) This section applies where a <sup>F38</sup>... patient's detention in a qualifying hospital is authorised by—
  - (a) a compulsory treatment order;
  - (b) a compulsion order;
  - (c) a hospital direction; or
  - (d) a transfer for treatment direction;and whether or not a certificate under section 127(1) (either as enacted or as applied by section 179(1) of this Act) or 224(2) of this Act has effect in relation to the patient.
- (2) On the application of any of the persons mentioned in subsection (6) below, the Tribunal may, if satisfied that [<sup>F39</sup>the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient], make an order—
  - (a) declaring that the patient is being detained in conditions of excessive security; and
  - (b) specifying a period, not exceeding 3 months and beginning with the making of the order, during which the duties under subsections (3) to (5) below shall be performed.
- (3) Where the Tribunal makes an order under subsection (2) above in respect of a relevant patient, the relevant Health Board shall identify a hospital—
  - (a) which is not a state hospital;
  - (b) which the Board and the Scottish Ministers, and its managers if they are not the Board, agree is a hospital in which the patient could be detained in conditions that would not involve the patient being subject to a level of security that is excessive in the patient's case; and
  - (c) in which accommodation is available for the patient.
- (4) Where the Tribunal makes an order under subsection (2) above in respect of a patient who is not a relevant patient, the relevant Health Board shall identify a hospital—
  - (a) which is not a state hospital;
  - (b) which the Board considers, and its managers if they are not the Board agree, is a hospital in which the patient could be detained in conditions that would not involve the patient being subject to a level of security that is excessive in the patient's case; and
  - (c) in which accommodation is available for the patient.
- (5) Where the Tribunal makes an order under subsection (2) above in respect of a patient, the relevant Health Board shall, as soon as practicable after identifying a hospital under subsection (3) or, as the case may be, (4) above, give notice [<sup>F40</sup>of the name of the hospital so identified to the managers of the hospital in which the patient is detained].
- (6) The persons referred to in subsection (2) above are—
  - (a) the <sup>F41</sup>... patient;
  - (b) the <sup>F41</sup>... patient's named person;
  - (c) any guardian of the <sup>F41</sup>... patient;
  - (d) any welfare attorney of the <sup>F41</sup>... patient; and

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- (e) the Commission.
- (7) An application may not be made under subsection (2) above—
- (a) if the compulsory treatment order that authorises the patient’s detention in hospital has not been extended;
  - (b) during the period of 6 months beginning with the making of the compulsion order that authorises the patient’s detention in hospital; or
  - (c) before the expiry of the period of 6 months beginning with the making of—
    - (i) the hospital direction; or
    - (ii) the transfer for treatment direction,
 that authorises the patient’s detention in hospital.
- [<sup>F42</sup>(7A) An application may not be made under subsection (2) above unless it is accompanied by a report prepared by [<sup>F43</sup>an approved medical] practitioner which—
- (a) states that in the practitioner's opinion the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient, and
  - (b) sets out the practitioner's reasons for being of that opinion.]
- (8) No more than one application may be made under subsection (2) above in respect of the same patient—
- (a) during the period of 12 months beginning with the day on which the order, or direction, authorising the patient’s detention in hospital is made;
  - (b) during any subsequent period of 12 months that begins with, or with an anniversary of, the expiry of the period mentioned in paragraph (a) above.
- (9) Before determining an application under subsection (2) above, the Tribunal shall—
- (a) afford the persons mentioned in subsection (10) below 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.
- (10) Those persons are—
- (a) the <sup>F44</sup>... patient;
  - (b) the <sup>F44</sup>... patient’s named person;
  - (c) the relevant Health Board;
  - (d) the <sup>F44</sup>... patient’s responsible medical officer;
  - (e) the managers of the [<sup>F45</sup>hospital in which the patient is detained];
  - (f) the mental health officer;
  - (g) any guardian of the <sup>F46</sup>... patient;
  - (h) any welfare attorney of the <sup>F46</sup>... patient;
  - (i) any curator *ad litem* appointed by the Tribunal in respect of the <sup>F46</sup>... patient;
  - (j) the Commission;
  - (k) in the case of a relevant patient, the Scottish Ministers; and
  - (l) any other person appearing to the Tribunal to have an interest in the application.

<sup>F47</sup>(11) .....

<sup>F47</sup>(12) .....

<sup>F47</sup>(13) .....



**Changes to legislation:** Mental Health (Care and Treatment) (Scotland) Act 2003, Part 17 is up to date with all changes known to be in force on or before 27 June 2024. 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

<sup>F47</sup>(14) .....

#### Textual Amendments

- F38** Word in s. 268(1) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(a)**, 61(2); S.S.I. 2015/361, art. 2
- F39** Words in s. 268(2) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(b)**, 61(2); S.S.I. 2015/361, art. 2
- F40** Words in s. 268(5) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(c)**, 61(2); S.S.I. 2015/361, art. 2
- F41** Word in s. 268(6) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(d)**, 61(2); S.S.I. 2015/361, art. 2
- F42** S. 268(7A) inserted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 14(3)**, 61(2); S.S.I. 2015/361, art. 2 (with arts. 3, 6)
- F43** Words in s. 268(7A) substituted (16.11.2015) by [The Mental Health \(Detention in Conditions of Excessive Security\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/364\)](#), regs. 1, **3(b)**
- F44** Word in s. 268(10)(a)-(d) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(e)(i)**, 61(2); S.S.I. 2015/361, art. 2
- F45** Words in s. 268(10)(e) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(e)(ii)**, 61(2); S.S.I. 2015/361, art. 2
- F46** Word in s. 268(10)(f)-(l) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(e)(i)**, 61(2); S.S.I. 2015/361, art. 2
- F47** S. 268(11)-(14) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(2)(f)**, 61(2); S.S.I. 2015/361, art. 2

#### Commencement Information

- I22** 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)
- I23** S. 268 in force at 6.1.2006 for specified purposes by [S.S.I. 2005/161](#), **art. 4**, Sch. 2
- I24** S. 268 in force at 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)

## 269 Order under section 268: further provision **S**

- (1) This section applies where—
  - (a) an order is made under section 268(2) of this Act in respect of a <sup>F48</sup>... patient;  
and
  - (b) the order is not recalled under section 271 of this Act;  
and whether or not a certificate under section 127(1) (either as enacted or as applied by section 179(1) of this Act) or 224(2) of this Act has effect in relation to the patient.
- (2) If the relevant Health Board fails, during the period specified in the order, to give notice to the Tribunal that the <sup>F48</sup>... patient has been transferred to another hospital, there shall be a hearing before the Tribunal.
- (3) Where such a hearing is held, the Tribunal may, if satisfied that [<sup>F49</sup>the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient], make an order—
  - (a) declaring that the patient is being detained in conditions of excessive security;  
and
  - (b) specifying—

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- (i) a period of 28 days; or
  - (ii) such longer period not exceeding 3 months as the Tribunal thinks fit, beginning with the day on which the order is made during which the duties under subsections (4) to (6) below shall be performed.
- (4) Where the Tribunal makes an order under subsection (3) above in respect of a relevant patient, the relevant Health Board shall identify a hospital—
- (a) which is not a state hospital;
  - (b) which the Board and the Scottish Ministers, and its managers if they are not the Board, agree is a hospital in which the patient could be detained in conditions that would not involve the patient being subject to a level of security that is excessive in the patient’s case; and
  - (c) in which accommodation is available for the patient.
- (5) Where the Tribunal makes an order under subsection (3) above in respect of a patient who is not a relevant patient, the relevant Health Board shall identify a hospital—
- (a) which is not a state hospital;
  - (b) which the Board considers, and its managers if they are not the Board agree, is a hospital in which the patient could be detained in conditions that would not involve the patient being subject to a level of security that is excessive in the patient’s case; and
  - (c) in which accommodation is available for the patient.
- (6) Where the Tribunal makes an order under subsection (3) above in respect of a patient, the relevant Health Board shall, as soon as practicable after identifying a hospital under subsection (4) or, as the case may be, (5) above, give notice [<sup>F50</sup>of the name of the hospital so identified to the managers of the hospital in which the patient is detained].
- (7) Before making an order under subsection (3) above, the Tribunal shall afford the persons mentioned in section 268(10) of this Act the opportunity—
- (a) of making representations (whether orally or in writing); and
  - (b) of leading, or producing, evidence.

#### Textual Amendments

- F48** Word in s. 269(1)(2) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(3)(a)**, 61(2); [S.S.I. 2015/361](#), [art. 2](#)
- F49** Words in s. 269(3) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(3)(b)**, 61(2); [S.S.I. 2015/361](#), [art. 2](#)
- F50** Words in s. 269(6) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 16(3)(c)**, 61(2); [S.S.I. 2015/361](#), [art. 2](#)

#### Commencement Information

- I25** 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)
- I26** S. 269 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, Part 17 is up to date with all changes known to be in force on or before 27 June 2024. 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

### Textual Amendments

**F51** S. 270 repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 15\(5\), 61\(2\)](#); S.S.I. 2015/361, art. 2 (with arts. 4-6)

## 271 <sup>[F52]</sup> Order under section 268 or 269: recall **S**

- (1) This section applies where an order is made under section 268(2) <sup>[F53]</sup> or 269(3) of this Act in respect of a <sup>F54</sup>... patient.
- (2) On the application of any of the persons mentioned in subsection (4) below, the Tribunal—
  - (a) shall, if satisfied that <sup>[F55]</sup>the test specified in regulations made under section 271A(2) of this Act is not met in relation to the patient], 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 268(3) to (5) <sup>[F56]</sup> or 269(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—
  - (a) afford the persons mentioned in section 268(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

**F52** S. 271 title substituted (16.11.2015) by virtue of [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 15\(7\), 61\(2\)](#); S.S.I. 2015/361, art. 2 (with arts. 4-6)

**F53** Words in s. 271(1) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 15\(6\)\(a\), 61\(2\)](#); S.S.I. 2015/361, art. 2 (with arts. 4-6)

**F54** Word in s. 271(1) repealed (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 16\(4\)\(a\), 61\(2\)](#); S.S.I. 2015/361, art. 2

**F55** Words in s. 271(2)(a) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 16\(4\)\(b\), 61\(2\)](#); S.S.I. 2015/361, art. 2

**F56** Words in s. 271(3) substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 15\(6\)\(b\), 61\(2\)](#); S.S.I. 2015/361, art. 2 (with arts. 4-6)

### Commencement Information

**I27** 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)

*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Part 17 is up to date with all changes known to be in force on or before 27 June 2024. 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*

**I28** S. 271 in force at 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)

*[<sup>F57</sup>Process for orders: further provision*

**Textual Amendments**

**F57** S. 271A and cross-heading inserted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. [16\(5\)](#), [61\(2\)](#); S.S.I. 2015/361, art. 2

**271A Regulation-making powers** **S**

- (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.]

*Enforcement: civil proceedings*

**272 Proceedings for specific performance of statutory duty** **S**

- (1) The duties imposed by virtue of—
  - <sup>F58</sup>(a) an order under section 264(2) of this Act, or
  - (c) an order under section 268(2) of this Act,
 shall not be enforceable by proceedings for specific performance of a statutory duty under section 45(b) of the Court of Session Act 1988 (c. 36).
- (2) Without prejudice to the rights of any other person, the duties imposed by virtue of—
  - <sup>F59</sup>(a) an order under section 265(3) of this Act, or
  - (c) an order under section 269(3) of this Act,

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shall be enforceable by proceedings by the Commission for specific performance of a statutory duty under section 45(b) of that Act of 1988.

#### Textual Amendments

- F58** S. 272(1)(a)(c) substituted for s. 272(1)(a)-(d) (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 15\(8\)\(a\)](#), [61\(2\)](#); [S.S.I. 2015/361](#), [art. 2](#) (with [arts. 4-6](#))
- F59** S. 272(2)(a)(c) substituted for s. 272(2)(a)-(d) (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 15\(8\)\(b\)](#), [61\(2\)](#); [S.S.I. 2015/361](#), [art. 2](#) (with [arts. 4-6](#))

#### Commencement Information

- I29** 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)
- I30** S. 272 in force at 1.5.2006 or such earlier day as the Scottish Ministers may by order appoint, see s. 333(2)

### Interpretation of Chapter

#### 273 Interpretation of Chapter **S**

[<sup>F60</sup>(1)] In this Chapter—

“relevant Health Board” means, in relation to a patient of such description as may be specified in regulations, the Health Board, or Special Health Board—

- (a) of such description as may be so specified; or
- (b) determined under such regulations; and

[<sup>F61</sup>“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.]

[<sup>F62</sup>(2)] In this Chapter, a reference to a hospital may be read as a reference to a hospital unit.

(3) For the purposes of this Chapter, “hospital unit” means any part of a hospital which is treated as a separate unit.]

#### Textual Amendments

- F60** Words in s. 273 renumbered as s. 273(1) (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 18\(2\)\(a\)](#), [61\(2\)](#); [S.S.I. 2015/361](#), [art. 2](#)
- F61** Words in s. 273 substituted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 16\(6\)](#), [61\(2\)](#); [S.S.I. 2015/361](#), [art. 2](#)
- F62** S. 273(2)(3) inserted (16.11.2015) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 18\(2\)\(b\)](#), [61\(2\)](#); [S.S.I. 2015/361](#), [art. 2](#)

#### Commencement Information

- I31** 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)
- I32** S. 273 in force at 6.1.2006 for specified purposes by [S.S.I. 2005/161](#), [art. 4](#), Sch. 2

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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 17 is up to date with all changes known to be in force on or before 27 June 2024. 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](#)*

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**I33** S. 273 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, Part 17 is up to date with all changes known to be in force on or before 27 June 2024. 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\(3\)](#)