



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

2003 asp 13

PART 18

MISCELLANEOUS

Informal patients

291 Application to Tribunal in relation to unlawful detention

- (1) This section applies where, otherwise than by virtue of this Act or the 1995 Act, a person (“the patient”)—
 - (a) has been admitted to a hospital; and
 - (b) is being given treatment there primarily for mental disorder.
- (2) A person mentioned in subsection (4) below may apply to the Tribunal for an order requiring the managers of the hospital to cease to detain the patient.
- (3) On an application under subsection (2) above the Tribunal shall—
 - (a) if satisfied that the patient is being unlawfully detained in the hospital, make the order mentioned in subsection (2) above; or
 - (b) if not satisfied about the matter mentioned in paragraph (a) above, refuse the application.
- (4) The persons referred to in subsection (2) above are—
 - (a) the patient;
 - (b) the patient’s named person;
 - (c) if the patient is a child, any person who has parental responsibilities in relation to the patient;
 - (d) a mental health officer;
 - (e) the Commission;
 - (f) any guardian of the patient;
 - (g) any welfare attorney of the patient; and
 - (h) any other person having an interest in the welfare of the patient.

Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Section 291 is up to date with all changes known to be in force on or before 10 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*

- (5) Subsection (2) above is without prejudice to any right that a person has by virtue of any enactment or rule of law.
- (6) In subsection (4)(c) above, “child” and “parental responsibilities” have the same meanings as they have in Part I of the Children (Scotland) Act 1995 (c. 36).

Commencement Information

- II** S. 291 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)

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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\(3\)](#)