



# Mental Health (Scotland) Act 2015

## 2015 asp 9

### PART 1

#### THE 2003 ACT

##### *Orders regarding level of security*

#### **14 Requirement for medical report**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 264 (detention in conditions of excessive security: state hospitals), after subsection (7) there is inserted—

“(7A) An application may not be made under subsection (2) above unless it is accompanied by a report prepared by a 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.”.

- (3) In section 268 (detention in conditions of excessive security: hospitals other than state hospitals), after subsection (7) there is inserted—

“(7A) An application may not be made under subsection (2) above unless it is accompanied by a report prepared by a 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.”.

#### **15 Process for enforcement of orders**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) Section 266 (order under section 265: further provision) is repealed.

- (3) In section 267 (orders under sections 264 to 266: recall)—
- (a) in subsection (1), for the words “, 265(3) or 266(3)” there is substituted “or 265(3)”,
  - (b) in subsection (3), for the words “, 265(4) to (6) or 266(4) to (6)” there is substituted “or 265(4) to (6)”.
- (4) The title of section 267 becomes “**Order under section 264 or 265: recall**”.
- (5) Section 270 (order under section 269: further provision) is repealed.
- (6) In section 271 (orders under sections 268 to 270: recall)—
- (a) in subsection (1), for the words “, 269(3) or 270(3)” there is substituted “or 269(3)”,
  - (b) in subsection (3), for the words “, 269(4) to (6) or 270(4) to (6)” there is substituted “or 269(4) to (6)”.
- (7) The title of section 271 becomes “**Order under section 268 or 269: recall**”.
- (8) In section 272 (proceedings for specific performance of statutory duty)—
- (a) in subsection (1), for paragraphs (a) to (d) there is substituted—
    - “(a) an order under section 264(2) of this Act, or
    - (c) an order under section 268(2) of this Act,”
  - (b) in subsection (2), for paragraphs (a) to (d) there is substituted—
    - “(a) an order under section 265(3) of this Act, or
    - (c) an order under section 269(3) of this Act,”

## 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,

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*Status: This is the original version (as it was originally enacted).*

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- (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”,
  - (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.”.

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

## **17 Section 16: exercise of powers before commencement**

(1) Regulations may be made under section 271A of the Mental Health (Care and Treatment) (Scotland) Act 2003 (which is to be inserted by section 16(5)) before section 16(5) comes into force.

(2) In relation to regulations made (or to be made) by virtue of subsection (1), section 16(7) is to be regarded as being in force.

(3) Regulations made by virtue of subsection (1) may not come into force before the day on which section 16(5) comes into force.

## **18 Meaning of hospital in sections 264 to 273 of the 2003 Act**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In section 273 (interpretation of Chapter)—

(a) the words up to the end of the definition of “relevant patient” become subsection (1),

(b) after that subsection there is inserted—

“(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.”.