

MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 Chapter 2: disposals on conviction and acquittal

Probation with a requirement for treatment

Section 135: amendment of 1995 Act: probation for treatment of mental disorder

265. **Section 135(a)** amends section 230 of the 1995 Act by removing the 12-month maximum time limit on a requirement for treatment for mental condition. This has the effect that such a treatment requirement can now last for up to the 3-year maximum duration of a probation order.
266. **Section 135(b)** replaces subsection (3) of section 230 of the 1995 Act with a new subsection (3) which has the effect that, before imposing a requirement of treatment, the court must be satisfied on the evidence from those who provide the service that the service is appropriate and, if the treatment is to be provided in a hospital, that the hospital has made arrangements to receive the offender.

Chapter 3: mentally disordered prisoners

Section 136: transfer of prisoners for treatment for mental disorder

267. **Section 136** provides for the transfer of prisoners to hospital for treatment for mental disorder. Further provisions regarding the effect of such transfers are at Part 11.
268. Subsections (2) to (4) provide that the Scottish Ministers may make a transfer for treatment direction if they are satisfied on the written reports of two medical practitioners, one of whom is an approved medical practitioner, that the following conditions are met:
- the prisoner has a mental disorder (provided that both medical practitioners agree on the type of disorder the prisoner has: see subsection (7));
 - medical treatment is available which is likely to prevent the mental disorder worsening or alleviate any of the symptoms of or effects of the disorder;
 - if the prisoner were not provided with the medical treatment proposed there would be significant risk to the health, safety or welfare of the prisoner or to the safety of any other person;
 - the making of the direction is necessary; and
 - a hospital which is suitable for the medical treatment of the prisoner could admit the prisoner within 7 days of the direction being made.

*These notes relate to the Mental Health (Care and Treatment) (Scotland)
Act 2003 (asp 13) which received Royal Assent on 25 April 2003*

269. Subsection (5) provides that a transfer for treatment direction may authorise the prisoner's detention in a state hospital only if the Scottish Ministers are satisfied that the prisoner needs to be detained under conditions of special security and that those conditions can be provided only in a state hospital.
270. Subsection (6) sets out the measures which a transfer for treatment direction authorises in relation to the prisoner. This includes the giving of medical treatment to the prisoner in accordance with Part 16.
271. Subsection (8) provides for the specification in the direction of the type of mental disorder that both medical practitioners agree the prisoner has. It also provides that the Scottish Ministers can specify directions for the removal of the prisoner to, and detention in, a place of safety pending admission to hospital. "Place of safety" here is defined by section 300 of the 2003 Act.
272. Subsection (9) provides that certain categories of prisoners may not be made subject to a transfer for treatment direction. These categories are prisoners subject to:
- assessment orders;
 - treatment orders;
 - interim compulsion orders;
 - orders made under section 54 of the 1995 Act (where an accused has been found insane so that the trial cannot proceed or continue);
 - orders made under section 57 of the 1995 Act (where an accused is acquitted on ground of insanity at the time of the offence);
 - compulsion orders; and
 - orders made under section 118(5) or 190 of the 1995 Act (where an offender is found on appeal to have been insane at the time of the offence).