

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 Chapter 2: disposals on conviction and acquittal

Compulsion orders

Section 133: mentally disordered offenders: compulsion orders

242. Section 57A creates a new type of order, the compulsion order. These orders replace hospital orders under section 58(1) (which is repealed by schedule 5 to the 2003 Act). The effect of a compulsion order is similar to that of a compulsory treatment order made under Part 7 of this Act. The court can authorise a range of measures in a compulsion order including detention in hospital or compulsory treatment in the community. Those measures are authorised for a period of 6 months. A person made subject to a compulsion order has a right of appeal against the order being made under section 60 of the 1995 Act (as amended by the 2003 Act).
243. Subsection (1) sets out which offenders may be made subject to a compulsion order. These are:
- those convicted in the High Court or the sheriff court of an offence punishable by imprisonment (other than an offence the sentence for which is fixed by law); and
 - those remitted to the High Court from the sheriff court for sentence for an offence punishable by imprisonment.
244. Subsections (2) to (6) set out the matters on which the court must be satisfied before it can make a compulsion order.
245. Subsection (2) provides that the court must be satisfied on the evidence of two medical practitioners, one of whom must be an approved medical practitioner (see section 61(1) of the 1995 Act as amended by the 2003 Act), that the conditions in subsection (3) are met and that the order is appropriate after consideration of the matters in subsection (4). Once a compulsion order (without an accompanying restriction order) is made, the measures specified in the order (which the court must select from those listed in subsection (8)) are authorised for a period of 6 months.
246. The conditions in subsection (3) are:
- that the offender has a mental disorder (provided both medical practitioners agree on the type of disorder the offender has: see subsection (13));
 - that medical treatment is available which is likely to prevent the mental disorder worsening or alleviate any of the symptoms or effects of the mental disorder;

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- that, if the offender were not provided with medical treatment there would be significant risk to the health, safety or welfare of the offender or to the safety of any other person; and
 - that the making of a compulsion order is necessary.
247. The matters to be considered in subsection (4) are-
- the mental health officer's report prepared under section 57C;
 - all the circumstances (including the nature of the offence of which the offender was convicted and the offender's past history); and
 - any alternative means of dealing with the offender.
248. Subsection (6) provides that the offender may be admitted to and detained in a state hospital only if both of the medical practitioners who gave evidence under subsection (2) satisfy the court that the offender needs to be detained under conditions of special security that can be provided only in a state hospital.
249. Subsection (7) provides that, where the court makes the offender subject to a restriction order at the same time as a compulsion order, the measures specified in the compulsion order shall be authorised indefinitely and not limited to the period of six months provided for by subsection (2)). The criteria for the making of a restriction order are set out in section 59 of the 1995 Act (as amended by the 2003 Act). The court can make a restriction order if, having regard to the nature of the offence of which the offender was convicted, the antecedents of the person and the risk that as a result of mental disorder the offender would commit offences if released, it is satisfied that the order is necessary for the protection of the public from serious harm.
250. The effects of the restriction order are outlined in Part 10 of the 2003 Act. A restriction order may be made only where the compulsion order authorises detention in hospital.
251. Subsection (8) sets out the measures that may be authorised when a compulsion order is made. A compulsion order can authorise detention in hospital or community based treatment in the same way as a compulsory treatment order, as provided for in Part 7 of the 2003 Act. However, unlike a compulsory treatment order, there is no provision for a court to specify in the order details of treatment or services which are considered to be appropriate.
252. Subsection (9) places a restriction on the power of the court to specify in a compulsion order that the offender must reside in a care home service (as defined in section 2(3) of the [Regulation of Care \(Scotland\) Act 2001 \(asp 8\)](#)). That can only be specified if the court is satisfied that the person providing the service is willing to receive the offender.
253. Subsections (10) to (12) give the Scottish Ministers power to prescribe by regulations measures which are to be treated as included in subsection (8).
254. Subsection (14) sets out the matters that must be specified in a compulsion order and also gives the court power to include directions in the order for the removal of the offender to, and detention in, a place of safety pending admission to the specified hospital or place.
255. Subsection (15) prevents the court in making a compulsion order from imposing on the offender at the same time any of a number of other orders and disposals (listed in subsection (15)(a)). The court's power to make other orders in respect of the offender is otherwise preserved by subsection (15)(b).
256. Section 57B(1) provides that, where a compulsion order authorises detention in hospital or requires residence at a specified place, the order authorises the removal of the offender to the hospital or place specified by one of the persons mentioned in subsection (2), within 7 days of the making of the order.

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257. Where the court is considering making an offender subject to a compulsion order, section 57C gives the court power to direct the mental health officer to interview the offender and prepare a report containing the information listed in subsection (4). The mental health officer need not interview the offender if it is impracticable to do so.
258. Section 57D(1) provides that, where a compulsion order authorises detention in hospital, if it is not practicable by reason of emergency or other special circumstances to admit the offender to the hospital specified in the order within 7 days, the court or the Scottish Ministers may direct that the offender be admitted to another hospital. Subsection (2) provides for notification of the making of a direction. Subsection (3) provides that, where a direction is made, the hospital specified shall replace the hospital specified in the compulsion order.

Urgent detention of acquitted persons

Section 134: power of court to detain acquitted persons

259. **Section 134** inserts new sections 60C and 60D into the 1995 Act. Section 60C gives the court power to detain, for the purpose of a medical examination, a person charged with an offence and who has been acquitted (other than by reason of insanity).
260. Before it can do so, the court must be satisfied on the evidence of two medical practitioners (one of whom must be an approved medical practitioner by virtue of section 61(1) of the 1995 Act (as amended by the 2003 Act)) that the person meets the criteria set out in subsection (3) and that it is not practicable for a medical practitioner to examine the person immediately.
261. The order authorises the measures mentioned in subsection (4), namely the removal of the person to, and the detention of the person in, a place of safety for a period of 6 hours to allow an examination by a medical practitioner.
262. Subsection (5) gives a police constable or person specified by the court in the order, the power to take an acquitted person into custody if that person absconds either on the way to, or from, the place of safety.
263. Subsection (6) provides that an order under this section ceases to have effect on the granting, before the expiry of the 6 hour period, of an emergency detention certificate or a short-term detention certificate in respect of the person.
264. Section 60D provides that where a court makes an order under section 60C(1), it must notify the Commission within 14 days and provide the information set out in subsection (3). Subsection (3)(e) gives power to the Scottish Ministers to add to the information which must be provided to the Commission. They may do so by making regulations, the procedure for which is set out in subsections (4) and (5).

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.
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).