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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: The Criminal Procedure (Scotland) Act 1995 (c.46) is up to date with all changes known to be in force on or before 25 May 2023. 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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#### SCHEDULE 4 MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Criminal Procedure (Scotland) Act 1995 (c.46)*

- 8 (1) The Criminal Procedure (Scotland) Act 1995 shall be amended as follows.
- (2) In section 54 (insanity in bar of trial)—
- (a) in paragraph (c) of subsection (1)—
- (i) in sub-paragraph (i), for the words from “he” to “1984” substitute “ the conditions mentioned in subsection (2A) below are met in respect of the person ”;
- (ii) for the words “temporary hospital order” there shall be substituted “ temporary compulsion order ”;
- (iii) for the words “committing him to that hospital” substitute “ authorising the measures mentioned in subsection (2B) below in respect of the person ”;
- (b) after subsection (2) insert—
- “(2A) The conditions referred to in subsection (1)(c)(i) above are—
- (a) that the person has a mental disorder;
- (b) that medical treatment which would be likely to—
- (i) prevent the mental disorder worsening; or
- (ii) alleviate any of the symptoms, or effects, of the disorder,
- is available for the person; and
- (c) that if the person were not provided with such medical treatment there would be a significant risk—
- (a) to the health, safety or welfare of the person; or
- (b) to the safety of any other person.
- (2B) The measures referred to in subsection (1)(c)<sup>F1</sup>... above are—
- (a) in the case of a person who, when the temporary compulsion order is made, has not been admitted to the specified hospital, the removal, before the expiry of the period of 7 days beginning with the day on which the order is made of the person to the specified hospital by—
- (i) a constable;
- (ii) a person employed in, or contracted to provide services in or to, the specified hospital who is authorised by the managers of that hospital to remove persons to hospital for the purposes of this section; or
- (iii) a specified person;
- (b) the detention of the person in the specified hospital; and
- (c) the giving to the person, in accordance with Part 16 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), of medical treatment.”;
- (c) in subsection (4), for the word “hospital” there shall be substituted “ compulsion ”; and

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(d) in subsection (8), after “section” insert—

““medical treatment” has the same meaning as in section 52D of this Act;

“specified” means specified in the temporary compulsion order; and”.

(3) In section 57 (disposals in cases where accused found to be insane)—

(a) in subsection (2)—

(i) in paragraph (a), for the words from “make” to the end substitute “ subject to subsection (4) below, make a compulsion order authorising the detention of the person in a hospital ”;

(ii) in paragraph (b), for the words from first “an” to the end substitute “ such a compulsion order, subject to subsection (4A) below, make a restriction order in respect of the person ”;

(iii) for paragraph (bb), substitute—

“(bb) subject to subsections (3A) and (4B) below, make an interim compulsion order in respect of the person;”;

(iv) in paragraph (c), for the words from “make” to the end substitute “ subject to subsections (4C) and (6) below, make a guardianship order in respect of the person ”;

(v) in paragraph (d)—

(A) at the beginning insert “ subject to subsection (5) below, ”; and

(B) after “Act)” insert “ in respect of the person ”;

(b) in subsection (3), for the word “hospital” substitute “ compulsion ”;

(c) after subsection (3) insert—

“(3A) The court may make an interim compulsion order under paragraph (bb) of subsection (2) above in respect of a person only where it has not previously made such an order in respect of the person under that paragraph.”; and

(d) for subsection (4) substitute—

“(4) For the purposes of subsection (2)(a) above—

(a) subsections (2) to (16) of section 57A of this Act shall apply as they apply for the purposes of subsection (1) of that section, subject to the following modifications—

(i) references to the offender shall be construed as references to the person to whom this section applies; and

(ii) in subsection (4)(b)(i), the reference to the offence of which the offender was convicted shall be construed as a reference to the offence with which the person to whom this section applies was charged;

(b) section 57B of this Act shall have effect subject to the modification that references to the offender shall be construed as references to the person to whom this section applies;

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- (c) section 57C of this Act shall have effect subject to the following modifications—
  - (i) references to the offender shall be construed as references to the person to whom this section applies; and
  - (ii) references to section 57A of this Act shall be construed as references to subsection (2)(a) above; and
- (d) section 57D of this Act shall have effect subject to the modification that references to the offender shall be construed as references to the person to whom this section applies.

(4A) For the purposes of subsection (2)(b) above, section 59 of this Act shall have effect.

(4B) For the purposes of subsection (2)(bb) above—

- (a) subsections (2) to (13) of section 53 of this Act shall apply as they apply for the purposes of subsection (1) of that section, subject to the following modifications—
  - (i) references to the offender shall be construed as references to the person to whom this section applies;
  - (ii) in subsection (3)(a)(ii), the reference to one of the disposals mentioned in subsection (6) of that section shall be construed as a reference to the disposal mentioned in subsection (6)(a) of that section;
  - (iii) in subsection (4)(a), the reference to the offence of which the offender is convicted shall be construed as a reference to the offence with which the person to whom this section applies is charged; and
  - (iv) subsection (6)(b) shall not apply;
- (b) section 53A of this Act shall have effect subject to the modification that references to the offender shall be construed as references to the person to whom this section applies;
- (c) section 53B of this Act shall have effect subject to the following modifications—
  - (i) references to the offender shall be construed as references to the person to whom this section applies; and
  - (ii) for paragraphs (a) and (b) of subsection (8) there shall be substituted “, revoke the interim compulsion order and—
    - (a) make an order in respect of the person under paragraph (a), (b), (c) or (d) of subsection (2) of section 57 of this Act; or

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- (b) decide, under paragraph (e) of that subsection, to make no order in respect of the person.”;
  - (d) section 53C of this Act shall have effect subject to the following modifications—
    - (i) references to the offender shall be construed as references to the person to whom this section applies; and
    - (ii) for paragraphs (a) to (c) of subsection (1) there shall be substituted—
      - “(a) makes an order in respect of the person under paragraph (a), (b), (c) or (d) of subsection (2) of section 57 of this Act; or
      - (b) decides, under paragraph (e) of that subsection, to make no order in respect of the person.”; and
  - (e) section 53D of this Act shall have effect subject to the modification that the reference to the offender shall be construed as a reference to the person to whom this section applies.
- (4C) For the purposes of subsection (2)(c) above, subsections (1A), (6) to (8) and (11) of section 58 of this Act shall apply, subject to the modifications that the reference to a person convicted and any references to the offender shall be construed as references to the person to whom this section applies.”.
- (4) In section 58 (orders for hospital admission or guardianship)—
- (a) in subsection (1A), for the words “as mentioned in subsection (1) above” there shall be substituted “in the High Court or the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment, ”; and
  - (b) in subsection (7)—
    - (i) for the words from first “the” to first “suffering” substitute “(by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)) the type (or types) of mental disorder that the offender has ”; and
    - (ii) for the words from [F2“the offender is described”] to third “form” substitute “the descriptions of the offender’s mental disorder by each of the medical practitioners, whose evidence is taken into account under subsection (1A)(a) above, specifies at least one type of mental disorder that is also specified by the other ”.
- (5) In section 59 (hospital orders: restrictions on discharge)—
- (a) in subsection (1)—
    - (i) for the words “hospital order” there shall be substituted “compulsion order authorising the detention of a person in a hospital by virtue of paragraph (a) of section 57A(8) of this Act ”; and

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- (ii) for the words “section 62(1) of the Mental Health (Scotland) Act 1984” there shall be substituted “ Part 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) ”;
  - (b) in subsection (2)—
    - (i) for the words “medical practitioner approved by the Health Board for the purposes of section 20 of the Mental Health (Scotland) Act 1984” there shall be substituted “ approved medical practitioner ”; and
    - (ii) for the words “section 58(1)(a)” there shall be substituted “ section 57A(2)(a) ”; and
  - (c) after subsection (2) insert—

“(2A) The court may, in the case of a person in respect of whom it did not, before making the compulsion order, make an interim compulsion order, make a restriction order in respect of the person only if satisfied that, in all the circumstances, it was not appropriate to make an interim compulsion order in respect of the person.”.
- (6) For section 59A (hospital directions) substitute—

*“Hospital directions*

### **59A Hospital direction**

- (1) This section applies where a person, not being a child, (in this section and in sections 59B and 59C of this Act referred to as the “offender”) is convicted on indictment in—
  - (a) the High Court; or
  - (b) the sheriff court,of an offence punishable by imprisonment.
- (2) If the court is satisfied—
  - (a) on the written or oral evidence of two medical practitioners—
    - (i) that the conditions mentioned in subsection (3) below are met in respect of the offender; and
    - (ii) as to the matters mentioned in subsection (4) below; and
  - (b) that, having regard to the matters mentioned in subsection (5) below, it is appropriate,the court may, in addition to any sentence of imprisonment which it has the power or the duty to impose, make, subject to subsection (6) below, a direction (in this Act referred to as a “hospital direction”) authorising the measures mentioned in subsection (7) below.
- (3) The conditions referred to in subsection (2)(a)(i) above are—
  - (a) that the offender has a mental disorder;
  - (b) that medical treatment which would be likely to—
    - (i) prevent the mental disorder worsening; or
    - (ii) alleviate any of the symptoms, or effects, of the disorder,is available for the offender;

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- (c) that if the offender were not provided with such medical treatment there would be a significant risk—
    - (i) to the health, safety or welfare of the offender; or
    - (ii) to the safety of any other person; and
  - (d) that the making of a hospital direction in respect of the offender is necessary.
- (4) The matters referred to in subsection (2)(a)(ii) above are—
- (a) that the hospital proposed by the two medical practitioners mentioned in subsection (2)(a) above is suitable for the purpose of giving the medical treatment mentioned in paragraph (b) of subsection (3) above to the offender; and
  - (b) that, were a hospital direction made, the offender could be admitted to such hospital before the expiry of the period of 7 days beginning with the day on which the direction is made.
- (5) The matters referred to in subsection (2)(b) above are—
- (a) the mental health officer's report, prepared in accordance with section 59B of this Act, in respect of the offender;
  - (b) all the circumstances, including—
    - (i) the nature of the offence of which the offender was convicted; and
    - (ii) the antecedents of the offender; and
  - (c) any alternative means of dealing with the offender.
- (6) A hospital direction may authorise detention in a state hospital only if, on the written or oral evidence of the two medical practitioners mentioned in subsection (2)(a) above, it appears to the court—
- (a) that the offender requires to be detained in a state hospital under conditions of special security; and
  - (b) that such conditions of special security can be provided only in a state hospital.
- (7) The measures mentioned in subsection (2) above are—
- (a) in the case of an offender who, when the hospital direction is made, has not been admitted to the specified hospital, the removal, before the expiry of the period of 7 days beginning with the day on which the direction is made, of the offender to the specified hospital by—
    - (i) a constable;
    - (ii) a person employed in, or contracted to provide services in or to, the specified hospital who is authorised by the managers of that hospital to remove persons to hospital for the purposes of this section; or
    - (iii) a specified person;
  - (b) the detention of the offender in the specified hospital; and
  - (c) the giving to the offender, in accordance with Part 16 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), of medical treatment.
- (8) The court shall be satisfied as to the condition mentioned in subsection (3) (a) above only if the description of the offender's mental disorder by each

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of the medical practitioners mentioned in subsection (2)(a) above specifies, by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), at least one type of mental disorder that the offender has that is also specified by the other.

- (9) A hospital direction—
- (a) shall specify, by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), the type (or types) of mental disorder that each of the medical practitioners mentioned in subsection (2)(a) above specifies that is also specified by the other; and
  - (b) may include such directions as the court thinks fit for the removal of the offender to, and the detention of the offender in, a place of safety pending the offender’s admission to the specified hospital.
- (10) In this section—
- “medical treatment” has the same meaning as in section 52D of this Act; and
  - “specified” means specified in the hospital direction.

#### **59B Hospital direction: mental health officer’s report**

- (1) This section applies where the court is considering making a hospital direction in relation to an offender under section 59A of this Act.
- (2) If directed to do so by the court, the mental health officer shall—
  - (a) subject to subsection (3) below, interview the offender; and
  - (b) prepare a report in relation to the offender in accordance with subsection (4) below.
- (3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.
- (4) The report shall state—
  - (a) the name and address of the offender;
  - (b) if known by the mental health officer, the name and address of the offender’s primary carer;
  - (c) in so far as relevant for the purposes of section 59A of this Act, details of the personal circumstances of the offender; and
  - (d) any other information that the mental health officer considers relevant for the purposes of that section.
- (5) In this section, “carer”, “primary”, in relation to a carer, and “mental health officer” have the same meanings as in section 57C of this Act.

#### **59C Hospital direction: supplementary**

- (1) If, before the expiry of the period of 7 days beginning with the day on which a hospital direction is made, it appears to the court, or, as the case may be, the Scottish Ministers, that, by reason of emergency or other special

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circumstances, it is not reasonably practicable for the offender to be admitted to the hospital specified in the hospital direction, the court, or, as the case may be, the Scottish Ministers, may direct that the offender be admitted to such other hospital as is specified.

(2) Where—

- (a) the court makes a direction under subsection (1) above, it shall inform the person having custody of the offender; and
- (b) the Scottish Ministers make such a direction, they shall inform—
  - (i) the court; and
  - (ii) the person having custody of the offender.

(3) Where a direction is made under subsection (1) above, the hospital direction shall have effect as if the hospital specified in the hospital direction were the hospital specified by the court, or, as the case may be, the Scottish Ministers, under subsection (1) above.

(4) In this section, “court” means the court which made the hospital direction.”.

(7) In section 60 (appeals against hospital orders)—

- (a) for the word “hospital” where it first, second and fourth occurs there shall be substituted “compulsion”; and
- (b) for the word “renewal” there shall be substituted “extension”.

(8) In section 60A (appeal by prosecutor against hospital orders etc.), in subsection (1), for paragraphs (a) and (b) substitute—

- “(a) a compulsion order;
- (b) a restriction order;
- (c) a guardianship order;
- (d) a decision under section 57(2)(e) of this Act to make no order; or
- (e) a hospital direction.”.

(9) In section 60B (intervention orders), for the word “hospital” there shall be substituted “compulsion”.

(10) In section 61 (requirements as to medical evidence)—

- (a) in subsection (1), for the words from second “a” to “disorder” substitute “an approved medical practitioner”;
- (b) in subsection (1A)—
  - (i) for “53(1)” substitute “52M(2)(a), 53(2)(a)”; and
  - (ii) for “58(1)(a)(i)” substitute “57A(2)(a)”;
- (c) in subsection (2), after first “of” insert “section 52D(2)(a) or”;
- (d) in subsection (3), after “section” insert “52D(2)(a) or”;
- (e) in subsection (6), for “53(1), 54(1)(c), 58(1)(a) and 59A(3)(a) and (b)” substitute “52M(2)(a), 53(2)(a), 54(1)(c), 57A(2)(a), 58(1A)(a), 59A(2)(a) and 60C(2)(a)”; and
- (f) after subsection (6) insert—

“(7) In this section, “approved medical practitioner” has the meaning given by section 22 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).”.



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- (11) In section 118 (disposal of appeals), in subsection (6), for the words “(3) and (4)” substitute “(3) to (6)”.
- (12) In section 190 (disposal of appeal where appellant insane), in subsection (2), for the words “Subsection (4)” substitute “Subsections (3) to (6)”.
- (13) In section 200 (remand for inquiry into physical or mental conditions)—
  - (a) in subsection (2), for paragraph (b)(ii) there shall be substituted—
    - “(ii) that the accused could be admitted to a hospital that is suitable for his detention,”; and
  - (b) in subsection (3)(a), for the words “a suitable hospital is available” there shall be substituted “he could be admitted to a hospital that is suitable”.
- (14) In section 210 (consideration of time spent in custody), in subsection (1)—
  - (a) in paragraph (a), after “virtue” insert “of an assessment order, a treatment order or an interim compulsion order or by virtue”; and
  - (b) in paragraph (c)(iii), after “virtue” insert “of an assessment order, a treatment order or an interim compulsion order or by virtue”.
- <sup>F3</sup>(15) .....
- (16) In section 307 (interpretation), in subsection (1)—
  - (a) after the definition of “appropriate court” there shall be inserted—
    - ““assessment order” has the meaning given by section 52D of this Act;”;
  - (b) after the definition of “complaint” there shall be inserted—
    - ““compulsion order” has the meaning given by section 57A of this Act;”;
  - (c) after the definition of “indictment” there shall be inserted—
    - ““interim compulsion order” has the meaning given by section 53 of this Act;”;
  - (d) after the definition of “Lord Commissioner of Justiciary” there shall be inserted—
    - ““mental disorder” has the meaning given by section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);
    - “Mental Welfare Commission” means the Mental Welfare Commission for Scotland;”;
  - (e) after the definition of “training school order” there shall be inserted—
    - ““treatment order” has the meaning given by section 52M of this Act;”.

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**Textual Amendments**

- F1** Word in sch. 4 para. 8(2)(b) (in the inserted 1995 c. 46, s. 54(2B)) repealed (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. 2](#)

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- F2** Words in sch. 4 para. 8(4)(b)(ii) 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(27)**
- F3** Sch. 4 para. 8(15) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), **sch. 2 para. 48(b)**; S.S.I. 2010/413, art. 2, sch. (with art. 3(1))

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**Commencement Information**

- I1** Sch. 4 para. 8 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\(3\)](#)