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

2003 asp 13

PART 8

MENTALLY DISORDERED PERSONS: CRIMINAL PROCEEDINGS

CHAPTER 1

PRE-SENTENCE ORDERS

Interim compulsion orders

131 Mentally disordered offenders: interim compulsion orders

For section 53 of the 1995 Act (interim hospital orders), there shall be substituted—

"Interim compulsion orders

53 Interim compulsion order

(1) This section applies where a person (referred to in this section and in sections 53A to 53D of this Act as an "offender")—

(a) is 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); or

(b) is remitted to the High Court by the sheriff under any enactment for sentence for such an offence.

(2) If the court is satisfied—

(a) on the written or oral evidence of two medical practitioners—

(i) that the offender has a mental disorder; and

(ii) as to the matters mentioned in subsection (3) below; and

(b) that, having regard to the matters mentioned in subsection (4) below, it is appropriate,

it may, subject to subsection (7) below, make an order (in this Act referred to as an "interim compulsion order") authorising the measures mentioned in subsection (8) below and specifying any matters to be included in the report under section 53B(1) of this Act.

(3) The matters referred to in subsection (2)(a)(ii) above are—

(a) that there are reasonable grounds for believing—

(i) that the conditions mentioned in subsection (5) below are likely to be met in respect of the offender; and

(ii) that the offender's mental disorder is such that it would be appropriate to make one of the disposals mentioned in subsection (6) below in relation to the offender;

(b) that the hospital to be specified in the order is suitable for the purpose of assessing whether the conditions mentioned in subsection (5) below are met in respect of the offender;

(c) that, were an interim compulsion order 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 order is made; and

(d) that it would not be reasonably practicable for the assessment mentioned in paragraph (b) above to be made unless an order were made.

(4) The matters referred to in subsection (2)(b) above are—

(a) all the circumstances (including the nature of the offence of which the offender is convicted); and

(b) any alternative means of dealing with the offender.

(5) The conditions referred to in paragraphs (a)(i) and (b) of subsection (3) above are—

(a) 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;

(b) 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

(c) that the making of an interim compulsion order in respect of the offender is necessary.

(6) The disposals are—

(a) both a compulsion order that authorises detention in hospital by virtue of section 57A(8)(a) of this Act and a restriction order; or

(b) a hospital direction.

(7) An interim compulsion order 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 hospital under conditions of special security; and

(b) that such conditions of special security can be provided only in a state hospital.

(8) The measures are—

(a) in the case of an offender who, when the interim 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 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, for a period not exceeding 12 weeks beginning with the day on which the order is made, of the offender in the specified hospital; and

(c) during the period of 12 weeks beginning with the day on which the order is made, 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.

(9) An interim compulsion order 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) The court may make an interim compulsion order in the absence of the offender only if—

(a) the offender is represented by counsel or solicitor;

(b) that counsel or solicitor is given an opportunity of being heard; and

(c) the court is satisfied that it is—

(i) impracticable; or

(ii) inappropriate,

for the offender to be brought before it.

(11) The court shall, as soon as reasonably practicable after making an interim compulsion order, give notice of the making of the order to—

(a) the person subject to the order;

(b) any solicitor acting for that person;

(c) the Scottish Ministers; and

(d) the Mental Welfare Commission.

(12) Where a court makes an interim compulsion order in relation to an offender, the court—

(a) shall not, at the same time—

(i) make an order under section 200 of this Act;

(ii) impose a fine;

(iii) pass sentence of imprisonment;

(iv) make a compulsion order;

(v) make a guardianship order;

(vi) make a probation order; or

(vii) make a community service order,

in relation of the offender;

(b) may make any other order which it has power to make apart from this section.

(13) In this section—

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

"sentence of imprisonment" includes any sentence or order for detention; and

"specified" means specified in the interim compulsion order.

53A Interim compulsion order: supplementary

(1) If, before the expiry of the period of 7 days beginning with the day on which the interim compulsion order is made, it appears to the court, or, as the case may be, the Scottish Ministers, that, by reason of emergency or other special circumstances, it is not reasonably practicable for the offender to be admitted to the hospital specified in the order, the court, or, as the case may be, the Scottish Ministers, may direct that the offender be admitted to the hospital specified in the direction.

(2) Where—

(a) the court makes a direction under subsection (1) above, it shall, as soon as reasonably practicable after making the direction, inform the person having custody of the offender; and

(b) the Scottish Ministers make such a direction, they shall, as soon as reasonably practicable after making the direction, inform—

(i) the court; and

(ii) the person having custody of the offender.

(3) Where a direction is made under subsection (1) above, the interim compulsion order shall have effect as if the hospital specified in the direction were the hospital specified in the order.

(4) In this section, "court" means the court which made the interim compulsion order.

53B Review and extension of interim compulsion order

(1) The responsible medical officer shall, before the expiry of the period specified by the court under section 53(8)(b) of this Act, submit a report in writing to the court—

(a) as to the matters mentioned in subsection (2) below; and

(b) as to any matters specified by the court under section 53(2) of this Act.

(2) The matters are—

(a) whether the conditions mentioned in section 53(5) of this Act are met in respect of the offender;

(b) the type (or types) of mental disorder that the offender has; and

(c) whether it is necessary to extend the interim compulsion order to allow further time for the assessment mentioned in section 53(3)(b) of this Act.

(3) The responsible medical officer shall, at the same time as such officer submits the report to the court, send a copy of such report to—

(a) the offender; and

(b) any solicitor acting for the offender.

(4) The court may, on receiving the report submitted under subsection (1) above, if satisfied that the extension of the order is necessary, extend the order for such period (not exceeding 12 weeks beginning with the day on which the order would cease to have effect were such an extension not made) as the court may specify.

(5) The court may extend an interim compulsion order under subsection (4) above for a period only if, by doing so, the total period for which the offender will be subject to the order does not exceed 12 months beginning with the day on which the order was first made.

(6) The court may, under subsection (4) above, extend an interim compulsion order in the absence of the offender only if—

(a) the offender is represented by counsel or a solicitor;

(b) that counsel or solicitor is given an opportunity of being heard; and

(c) the court is satisfied that it is—

(i) impracticable; or

(ii) inappropriate,

for the offender to be brought before it.

(7) Subsections (1) to (9) of this section shall apply for the purposes of an interim compulsion order extended under subsection (4) above as they apply for the purposes of an interim compulsion order, references in those subsections to the period specified by the court under section 53(8)(b) of this Act being construed as references to the period specified by the court under subsection (4) above.

(8) Where a report is submitted under subsection (1) above, the court may, before the expiry of the period specified by the court under section 53(8)(b) of this Act—

(a) revoke the interim compulsion order and make one of the disposals mentioned in section 53(6) of this Act; or

(b) revoke the interim compulsion order and deal with the offender in any way (other than by making an interim compulsion order) in which the court could have dealt with the offender if no such order had been made.

(9) In this section—

"court" means the court which made the interim compulsion order; and

"responsible medical officer" means the responsible medical officer appointed in respect of the offender under section 230 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

53C Early termination of interim compulsion order

(1) An interim compulsion order shall cease to have effect if the court—

(a) makes a compulsion order in relation to the offender;
(b) makes a hospital direction in relation to the offender; or
(c) deals with the offender in some other way, including the imposing of a sentence of imprisonment on the offender.

(2) In this section, "court" means the court which made the interim compulsion order.

53D Power of court on interim compulsion order ceasing to have effect

(1) Where, otherwise than by virtue of section 53B(8) or 53C of this Act, an interim compulsion order ceases to have effect the court may deal with the offender who was subject to the order in any way (other than the making of a new interim compulsion order) in which it could have dealt with the offender if no such order had been made.

(2) In this section, "court" means the court which made the interim compulsion order.".