



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VI

#### MENTAL DISORDER

#### *[<sup>F1</sup>Interim compulsion orders]*

#### <sup>F1</sup>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

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- (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 [<sup>F2</sup>end of the day following the] 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 [<sup>F3</sup>end of the day following the] 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;

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- (b) the detention, for a period not exceeding [<sup>F4</sup>the relevant period given by subsection (8A) below], of the offender in the specified hospital; and
  - (c) during the [<sup>F5</sup>relevant period given by subsection (8A) below], 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.
- [<sup>F6</sup>(8A) For the purpose of subsection (8)(b) and (c) above, the relevant period is the period—
- (a) beginning with the day on which the order is made,
  - (b) expiring at the end of the 12 weeks following that day.]
- (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;
    - [<sup>F7</sup>(vi) impose a community payback order;
    - (vii) make a drug treatment and testing order; or
    - (viii) make a restriction of liberty 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.]

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### Textual Amendments

- F1** Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, **art. 33(14)**)
- F2** Words in s. 53(3)(c) substituted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 42(2)(a)**, 61(2); S.S.I. 2017/197, **art. 2**, sch.
- F3** Words in s. 53(8)(a) substituted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 42(2)(b)(i)**, 61(2); S.S.I. 2017/197, **art. 2**, sch.
- F4** Words in s. 53(8)(b) substituted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 42(2)(b)(ii)**, 61(2); S.S.I. 2017/197, **art. 2**, sch.
- F5** Words in s. 53(8)(c) substituted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 42(2)(b)(iii)**, 61(2); S.S.I. 2017/197, **art. 2**, sch.
- F6** S. 53(8A) inserted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 42(2)(c)**, 61(2); S.S.I. 2017/197, **art. 2**, sch.
- F7** S. 53(12)(a)(vi)-(viii) substituted for s. 53(12)(a)(vi)(vii) (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 14(2)**, 206(1), **Sch. 2 para. 4**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)

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