



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VI

MENTAL DISORDER

[^{F1}Compulsion orders

[^{F1}57A Compulsion order

- (1) This section applies where a person (in this section and in sections 57B to 57D of this Act, referred to as the “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, that the conditions mentioned in subsection (3) below are met in respect of the offender; and
 - (b) that, having regard to the matters mentioned in subsection (4) below, it is appropriate,
- it may, subject to subsection (5) below, make an order (in this Act referred to as a “compulsion order”) authorising, subject to subsection (7) below, for the period of 6 months beginning with the day on which the order is made such of the measures mentioned in subsection (8) below as may be specified in the order.
- (3) The conditions referred to in subsection (2)(a) 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,

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- is available for the offender;
- (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 compulsion order in respect of the offender is necessary.
- (4) The matters referred to in subsection (2)(b) above are—
- (a) the mental health officer’s report, prepared in accordance with section 57C 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.
- (5) The court may, subject to subsection (6) below, make a compulsion order authorising the detention of the offender in a hospital by virtue of subsection (8)(a) below only if satisfied, on the written or oral evidence of the two medical practitioners mentioned in subsection (2)(a) above, that—
- (a) the medical treatment mentioned in subsection (3)(b) above can be provided only if the offender is detained in hospital;
 - (b) the offender could be admitted to the hospital to be specified in the order before the expiry of the period of 7 days beginning with the day on which the order is made; and
 - (c) the hospital to be so specified is suitable for the purpose of giving the medical treatment to the offender.
- (6) A 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.
- (7) Where the court—
- (a) makes a compulsion order in respect of an offender; and
 - (b) also makes a restriction order in respect of the offender,
- the compulsion order shall authorise the measures specified in it without limitation of time.
- (8) The measures mentioned in subsection (2) above are—
- (a) the detention of the offender in the specified hospital;
 - (b) 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;
 - (c) the imposition of a requirement on the offender to attend—
 - (i) on specified or directed dates; or
 - (ii) at specified or directed intervals,
 specified or directed places with a view to receiving medical treatment;
 - (d) the imposition of a requirement on the offender to attend—
 - (i) on specified or directed dates; or

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- (ii) at specified or directed intervals,
specified or directed places with a view to receiving community care services, relevant services or any treatment, care or service;
 - (e) subject to subsection (9) below, the imposition of a requirement on the offender to reside at a specified place;
 - (f) the imposition of a requirement on the offender to allow—
 - (i) the mental health officer;
 - (ii) the offender’s responsible medical officer; or
 - (iii) any person responsible for providing medical treatment, community care services, relevant services or any treatment, care or service to the offender who is authorised for the purposes of this paragraph by the offender’s responsible medical officer,to visit the offender in the place where the offender resides;
 - (g) the imposition of a requirement on the offender to obtain the approval of the mental health officer to any change of address; and
 - (h) the imposition of a requirement on the offender to inform the mental health officer of any change of address before the change takes effect.
- (9) The court may make a compulsion order imposing, by virtue of subsection (8)(e) above, a requirement on an offender to reside at a specified place which is a place used for the purpose of providing a care home service only if the court is satisfied that the person providing the care home service is willing to receive the offender.
- (10) The Scottish Ministers may, by regulations made by statutory instrument, make provision for measures prescribed by the regulations to be treated as included among the measures mentioned in subsection (8) above.
- (11) The power conferred by subsection (10) above may be exercised so as to make different provision for different cases or descriptions of case or for different purposes.
- (12) No regulations shall be made under subsection (10) above unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Scottish Parliament.
- (13) 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 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.
- (14) A compulsion order—
 - (a) shall specify—
 - (i) 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 the offender has that is also specified by the other; and
 - (ii) if the order does not, by virtue of subsection (8)(a) above, authorise the detention of the offender in hospital, the name of the hospital

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the managers of which are to have responsibility for appointing the offender's responsible medical officer; and

- (b) may include—
- (i) in a case where a compulsion order authorises the detention of the offender in a specified hospital by virtue of subsection (8)(a) above; or
 - (ii) in a case where a compulsion order imposes a requirement on the offender to reside at a specified place by virtue of subsection (8)(e) above,

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 or, as the case may be, place.

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

- (a) shall not—
- (i) make an order under section 200 of this Act;
 - (ii) make an interim compulsion order;
 - (iii) make a guardianship order;
 - (iv) pass a sentence of imprisonment;
 - (v) impose a fine;
 - [^{F2}(vi) impose a community payback order;
 - (vii) make a drug treatment and testing order; or
 - (viii) make a restriction of liberty order,]
- in relation to the offender;
- (b) may make any other order that the court has power to make apart from this section.

(16) In this section—

“care home service” has the meaning given by [^{F3}paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010] ;

“community care services” has the meaning given by section [^{F4}12A(8)] of the Social Work (Scotland) Act 1968 (c. 49);

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

“relevant services” has the meaning given by section 19(2) of the Children (Scotland) Act 1995 (c. 36);

“responsible medical officer”, in relation to an offender, 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);

“restriction order” means an order under section 59 of this Act;

“sentence of imprisonment” includes any sentence or order for detention; and

“specified” means specified in the compulsion order.]

Textual Amendments

- F1** Ss. 57A-57D and cross-heading inserted (21.3.2005 for certain purposes and otherwise 5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), **ss. 133, 333(1)-(4)**; S.S.I. 2005/161, **arts. 2, 3, Sch. 1** (as amended (27.9.2005) by S.S.I. 2005/465, **art. 2, Sch. 1 para. 32(14)**)

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- F2** S. 57A(15)(a)(vi)-(viii) substituted for s. 57A(15)(a)(vi)(vii) (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 5**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F3** Words in s. 57A(16) substituted (1.4.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 (S.S.I. 2011/211), art. 1, **sch. 1 para. 7**
- F4** Word in s. 57A(16) substituted (1.4.2015) by The Public Bodies (Joint Working) (Scotland) Act 2014 (Consequential Modifications and Saving) Order 2015 (S.S.I. 2015/157), art. 1(1), **sch. para. 3**

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