



# Crime and Punishment (Scotland) Act 1997

## 1997 CHAPTER 48

### PART I

#### SENTENCING

##### *Mentally disordered offenders*

#### **6 Disposal in cases of mentally disordered offenders**

- (1) After section 59 of the 1995 Act (restriction orders), there shall be inserted the following section—

##### **“59A Hospital directions**

- (1) Subject to subsection (2) and (3) below, where a person is convicted on indictment in the High Court or in the sheriff court of an offence punishable by imprisonment, the court may, in addition to any sentence of imprisonment which it has the power or the duty to impose, by a direction under this subsection (in this Act referred to as a “hospital direction”) authorise his admission to and detention in such hospital as may be specified in the direction.
- (2) Subsection (1) above shall not apply where the person convicted is a child.
- (3) A hospital direction shall not be made unless—
- the court is satisfied on the written or oral evidence of two medical practitioners (complying with section 61 of this Act) that the grounds set out in section 17(1) of the Mental Health (Scotland) Act 1984 apply in relation to the offender;
  - the medical practitioners mentioned in paragraph (a) above each describe the person as suffering from the same form of mental

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- disorder, being mental illness or mental handicap, whether or not he is also described by either of them as suffering from the other form; and
- (c) the court is satisfied that the hospital to be specified in the direction can admit the person in respect of whom it is to be made within 7 days of the direction being made.
- (4) A State hospital shall not be specified in a hospital direction in respect of the detention of a person unless the court is satisfied, on the evidence of the medical practitioners which is taken into account under paragraphs (a) and (b) of subsection (3) above, that the person—
- (a) on account of his dangerous violent or criminal propensities requires treatment under conditions of special security; and
- (b) cannot suitably be cared for in a hospital other than a State hospital.
- (5) A hospital direction shall specify the form of mental disorder from which, upon the evidence taken into account under paragraphs (a) and (b) of subsection (3) above, the person in respect of whom it is made is found to be suffering.
- (6) The court by which a hospital direction is made may give such additional directions as it thinks fit for the conveyance of the person in respect of whom it is made to a place of safety and for his detention in that place pending his admission to hospital within the period mentioned in paragraph (c) of subsection (3) above.
- (7) The court shall not make an additional direction under subsection (6) above directing the conveyance of the person concerned to a place of safety which is a residential establishment unless it is satisfied that the managers of that establishment are willing to receive him in the establishment.”.
- (2) In section 60 of the 1995 Act (appeals against disposal related to mental disorder)—
- (a) for the words “or a restriction order” there shall be substituted the words “, a restriction order or a hospital direction”; and
- (b) for the words “order in” there shall be substituted the words “order or, as the case may be, direction in”.
- (3) In section 204 of the 1995 Act (restrictions on the passing of sentence of imprisonment)—
- (a) in subsection (2), the words from “and”, where it first occurs, to the end shall cease to have effect; and
- (b) after subsection (2), there shall be inserted the following subsection—
- “(2A) For the purpose of determining under subsection (2) above whether any other method of dealing with such a person is appropriate, the court shall take into account—
- (a) such information as it has been able to obtain from an officer of a local authority or otherwise about his circumstances;
- (b) any information before it concerning his character and mental and physical condition;
- (c) its power to make a hospital direction in addition to imposing a sentence of imprisonment.”.
- (4) In section 207 of the 1995 Act (detention of young offenders), after subsection (4) there shall be inserted the following subsection—

“(4A) In forming an opinion under subsection (3) above the court shall take into account its power to make a hospital direction in addition to imposing a period of detention.”.

(5) In section 307 of the 1995 Act (interpretation), after the definition of “hospital” there shall be inserted the following definition—

““hospital direction” has the meaning assigned to it by section 59A(1) of this Act;”.

## 7 **Effect of hospital direction**

(1) After section 62 of the 1984 Act, there shall be inserted the following section—

### “62A Effect of hospital direction

(1) A hospital direction made under section 59A of the Criminal Procedure (Scotland) Act 1995 shall be sufficient authority—

- (a) for a constable, a mental health officer, an officer on the staff of the hospital specified in the direction or other person directed to do so by the court to convey the person in respect of whom the direction has been made to the hospital specified in the direction within a period of 7 days; and
- (b) for the managers of the hospital so specified to admit him at any time within that period and thereafter to detain him in accordance with the provisions of this Act.

(2) Where the managers of a hospital specified in a hospital direction propose to admit the patient to a hospital unit in that hospital, they shall, if that unit was not so specified, notify the Secretary of State and the Mental Welfare Commission of the patient’s proposed admission to and detention in that unit; and the patient shall not be so admitted unless the Secretary of State has consented to the proposed admission.

(3) If within the period of 7 days referred to in subsection (1) of this section it appears to the Secretary of State that by reason of an emergency or other special circumstance it is not practicable for the person to whom the hospital direction relates to be received into the hospital specified in the direction, he may give a direction under this subsection for the admission of that person to such other hospital as appears to be appropriate in lieu of the hospital so specified.

(4) Where a direction is given by the Secretary of State under subsection (3) of this section, he shall cause the person having custody of the person to whom the hospital direction relates to be informed, and the hospital direction shall have effect as if the hospital specified in the direction under subsection (3) of this section were substituted for the hospital specified in the hospital direction.

(5) Where a patient has been admitted to a hospital under a hospital direction—

- (a) none of the provisions of Part V of this Act relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital direction until he is remitted to prison in

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- accordance with section 65(2) or 74(3) of this Act or he is discharged in accordance with section 74(8B) of this Act;
- (b) the following powers shall be exercisable only with the consent of the Secretary of State, that is to say—
- (i) power to grant leave of absence to the patient under section 27 of this Act;
  - (ii) power to transfer the patient under section 29 of this Act;
- and if leave of absence is granted under the said section 27 the power to recall shall be vested in the Secretary of State as well as in the responsible medical officer;
- (c) the power to take the patient into custody and return him under section 28 of this Act may be exercised at any time,
- and in relation to any such patient the provisions of the said Part V specified in Part II of the Second Schedule to this Act shall have effect subject to the exceptions and modifications set out in that Part and the remaining provisions of Part V shall not apply.”
- (2) In section 63 of that Act (rights of appeal of restricted patients)—
- (a) in subsection (1)—
    - (i) in the definition of “restricted patient” after the word “order” there shall be substituted the words “, to a hospital direction”; and
    - (ii) for the definition of “relevant hospital order” and “relevant transfer direction” there shall be substituted the following definition—
 

““relevant hospital order”, “relevant hospital direction” and “relevant transfer direction”, in relation to a restricted patient, mean the hospital order, hospital direction or transfer direction by virtue of which he is liable to be detained in a hospital.”; and
  - (b) in subsection (2), in paragraph (a), after the word “order” there shall be inserted the words “, hospital direction”.
- (3) In section 65 of that Act (appeal where person is subject to restriction direction)—
- (a) in subsection (1), after the word “subject” there shall be inserted the words “to a hospital direction or”;
  - (b) in subsection (2)—
    - (i) in paragraph (a) for the words “removed to hospital” there shall be substituted the words “conveyed under a relevant hospital direction or removed under a relevant transfer direction to a hospital specified in the direction” and for the words “so removed” there shall be substituted the words “so conveyed or removed”; and
    - (ii) the words after paragraph (b) shall cease to have effect; and
  - (c) after subsection (2) there shall be inserted the following subsection—
 

“(3) Where a direction has been given under subsection (2) of this section, on the person’s arrival in the prison or other institution or place to which he has been remitted by virtue of such a direction the relevant hospital direction or, as the case may be, the relevant transfer direction together with the restriction direction given in respect of the person shall cease to have effect.”.
- (4) In section 74 of that Act (further provision as to transfer directions and restriction directions)—

- (a) after subsection (1), there shall be inserted the following subsection—
  - “(1A) This subsection applies if the Secretary of State is satisfied as regards a person who has been conveyed to a hospital under a hospital direction as to the matters mentioned in subsection (2) below at a time when the person, by virtue of a sentence of imprisonment imposed on him at the time that direction was made, would but for that direction be in prison or being detained other than in a hospital.”;
- (b) in subsection (2), after the words “subsection (1)” there shall be inserted the words “and (1A)”;
- (c) in subsection (3)—
  - (i) after the words “subsection (1)” there shall be inserted the words “or (1A)”;
  - (ii) after the word “been”, where it occurs for the second time, there shall be inserted the words “conveyed or”;
  - (iii) for the words “so removed” there shall be substituted the words “so conveyed or removed”;
- (d) in subsection (4), after the words “subsection (1)” there shall be inserted the words “or (1A)”;
- (e) in subsection (5), after the words “restriction direction” there shall be inserted the words “or, as the case may be, the hospital direction”;
- (f) after subsection (8), there shall be inserted the following subsections—
  - “(8A) This subsection applies where a hospital direction has been made in respect of a person and he has thereafter been released under the Crime and Punishment (Scotland) Act 1997.
  - (8B) Where subsection (8A) above applies—
    - (a) the hospital direction shall forthwith cease to have effect; and
    - (b) the person shall thereupon be discharged from hospital unless a report is furnished in respect of him under subsection (9) below.”;
- (g) in subsection (9)—
  - (i) after the word “before” there shall be inserted—
    - “—
    - (a)”;
    - and
  - (ii) after the word “above” there shall be inserted the following paragraph—
    - “; or
    - (b) a hospital direction ceases to have effect,”;
- (h) in subsection (10), after the words “restriction direction”, in both places where they occur, there shall be inserted the words “or, as the case may be, hospital direction”;
- (i) in subsection (11), after the words “transfer direction” there shall be inserted the words “or, as the case may be, hospital direction”.

- (5) In section 125 of that Act (interpretation), after the definition of “hospital” there shall be inserted the following definition—

““hospital direction” has the meaning assigned to it by section 59A(1) of the Criminal Procedure (Scotland) Act 1995;”.

## **8 Remand of persons suffering from mental disorder to private hospital**

In section 70 of the 1984 Act (removal to hospital of persons on remand), the words “(not being a private hospital)” shall cease to have effect.

## **9 Power to specify hospital unit**

(1) Subject to subsection (2) below, any power to specify a hospital which is conferred by—

- (a) section 57(2)(a) of the 1995 Act (disposal where accused insane);
- (b) section 58 of the 1995 Act (hospital orders);
- (c) section 59A of the 1995 Act (hospital directions); or
- (d) section 71 of the 1984 Act (transfer direction),

includes a power to specify a hospital unit; and where such a unit is specified in relation to any person in the exercise of such a power, any reference in any enactment (including one contained in this Act) to him being, or being liable to be, detained in a hospital shall be construed accordingly.

(2) In subsection (1) above—

- (a) paragraph (a) shall not apply unless the court also makes an order under paragraph (b) of section 57(2) of the 1995 Act;
- (b) paragraph (b) shall not apply unless the court also makes an order under section 59 of the 1995 Act;
- (c) paragraph (d) shall not apply unless the Secretary of State also gives a direction under section 72 of the 1984 Act.

(3) In this section—

“hospital”, in relation to the exercise of a power, has the same meaning as in the enactment which confers the power;

“hospital unit” means any part of a hospital which is treated as a separate unit.

## **10 Medical evidence in relation to mentally disordered offenders**

(1) In section 53 of the 1995 Act (interim hospital orders)—

- (a) in subsection (1), the words “subsection (2) below and” shall cease to have effect; and
- (b) subsection (2) shall cease to have effect.

(2) In section 61 of the 1995 Act (requirements as to medical evidence)—

- (a) in subsection (1), for the words from “under” to “this Act” there shall be substituted the words “in making a finding under section 54(1)(a) of this Act or under any of the relevant provisions”;
- (b) after subsection (1) there shall be inserted the following subsection—

“(1A) Of the medical practitioners whose evidence is taken into account under section 53(1), 54(1)(c), 58(1)(a)(i) or 59A(3)(a) and (b) of this

Act, at least one shall be employed at the hospital which is to be specified in the order or, as the case may be, direction.”;

- (c) in subsection (2), for the words “the said section 58(1)(a)” there shall be substituted the words “any of the relevant provisions”;
- (d) in subsection (3), for the words “the said sections 54(1) and 58(1)(a)” there shall be substituted the words “making a finding under section 54(1)(a) of this Act or of any of the relevant provisions”; and
- (e) after subsection (5) there shall be added the following subsection—

“(6) In this section the “relevant provisions” means sections 53(1), 54(1)(c), 58(1)(a) and 59A(3)(a) and (b) of this Act.”.

## **11 Increase in maximum period of interim hospital orders**

In section 53 of the 1995 Act (interim hospital orders), in subsection (6), for the words “six months” there shall be substituted the words “twelve months”.

## **12 Sentence calculation where remand spent in hospital**

In section 210 of the 1995 Act (consideration of time spent in custody), in subsection (1)—

- (a) at the end of paragraph (a) there shall be inserted the words “, or spent in hospital awaiting trial or sentence by virtue of an order made under section 52, 53 or 200 of this Act”; and
- (b) in paragraph (c), after subparagraph (ii) there shall be inserted the following words—

“; or

(iii) has spent a period of time in hospital awaiting trial or sentence by virtue of an order made under section 52, 53 or 200 of this Act.”.