

# **MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 8 – Mentally Disordered Persons: Criminal Proceedings** **Chapter 1: pre-sentence orders**

##### *Assessment orders and treatment orders*

##### **Interim compulsion orders**

##### *Section 131: mentally disordered offenders: interim compulsion orders*

222. **Section 131** replaces section 53 of the 1995 Act (which made provision for interim hospital orders) with new sections 53 to 53D (which make provision for interim compulsion orders).
223. An interim compulsion order authorises a period of hospital detention for assessment of an offender's mental disorder, the offender's needs and the risk posed, in order to inform the sentencing decision of the court. The order may be made if a court thinks that either a compulsion order combined with a restriction order or a hospital direction may be in prospect. The person made subject to the interim compulsion order has a right of appeal against it being made under section 60 of the 1995 Act (as amended by the 2003 Act).
224. Section 53(1) sets out which offenders may be made subject to interim compulsion order, namely:
- persons 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); and
  - persons remitted to the High Court from the sheriff court for sentence for an offence punishable by imprisonment.
225. Subsections (2) to (7) set out the matters as to which the court must be satisfied before it can make an interim compulsion order. Subsection (2) provides that the court must be satisfied on the evidence of two medical practitioners, one of whom must be an approved medical practitioner (see section 61(1) of the 1995 Act as amended by the 2003 Act), that the offender has a mental disorder, as to the matters in subsection (3) and that it is appropriate having regard to the matters mentioned in subsection (4).
226. The matters in subsection (3) are:
- there are reasonable grounds for believing that the conditions outlined in subsection (5) are met, namely-
    - that medical treatment is available, which would be of benefit to the offender and without which the offender would be a significant risk; and

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- that it is necessary to make an interim compulsion order;
  - there are reasonable grounds for believing that it would be appropriate to make either a compulsion order combined with a restriction order or a hospital direction in respect of the offender;
  - a hospital which is suitable for assessing the offender could admit them within 7 days of the order being made; and
  - it would not be reasonably practicable for the assessment to be made without an interim compulsion order being made.
227. The matters to which the court must have regard in making an interim compulsion order, set out in subsection (4), are-
- all the circumstances of the case (including the nature of the offence of which the person was convicted); and
  - any alternative means of dealing with the person.
228. Subsection (7) provides that the person can be admitted to a state hospital only if the court is satisfied that the person needs to be detained under conditions of special security and that those conditions can be provided only in a state hospital.
229. If the court makes an interim compulsion order, it may specify in the order matters which it requires the responsible medical officer to include in the report to be submitted under section 53B(1) (see section 53(2)).
230. Subsection (8) sets out the measures that are authorised when an interim compulsion order is made. These are-
- the removal, if necessary, of the offender to the hospital specified in the order within 7 days of it being made by one of the persons mentioned in subsection 8(a);
  - detention of the offender in that hospital for up to 12 weeks; and
  - the giving of medical treatment to the offender in accordance with Part 16 of the 2003 Act.
231. Subsection (9) gives the court power to include directions in the interim compulsion order for the removal of the offender to, and detention in, a place of safety pending their admission to the hospital specified in the order.
232. Subsection (10) allows the court to make an interim compulsion order in the absence of the offender in respect of whom the order is being made, in specified circumstances.
233. Subsection (11) provides for notification of the making of an interim compulsion order.
234. Subsection (12) prevents the court in making an interim compulsion order from making any of a number of other orders and disposals (listed in subsection (12)(a)) at the same time. The court's power to make orders otherwise in respect of the offender is preserved by subsection (12)(b).
235. Section 53A(1) provides that if it is not practicable by reason of emergency or other special circumstances to admit the offender to the hospital specified in the order within 7 days, the court or the Scottish Ministers may direct that the offender be admitted to another hospital. Subsection (2) provides for the notification of the making of a direction. Subsection (3) provides that, where a direction has been made, the hospital specified in it shall replace the hospital originally specified in the interim compulsion order.
236. Subsections (1) to (7) of section 53B set out the provisions for the review and extension of interim compulsion orders. Before the expiry of the period specified by the court

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(of up to 12 weeks) the responsible medical officer must submit a written report with the results of the assessment undertaken and any recommendation as to further renewal for continued assessment or on the appropriate disposal of the person. The responsible medical officer must also send a copy of the report to the offender and to any solicitor acting on the offender's behalf.

237. The interim compulsion order can, under subsection (4), be extended by the court for further periods of up to 12 weeks, subject to an overall cumulative maximum of 12 months (see subsection (5)). Subsection (6) provides when the court can extend an interim compulsion order in the offender's absence.
238. Subsection (8) provides the court with powers, on receiving the report from the responsible medical officer under subsection (1), to revoke the order and either make one of the disposals mentioned in section 53(6) or deal with the offender in any way in which it could originally have done. It cannot, however, make a fresh interim compulsion order. The disposals mentioned in section 53(6) are either a compulsion order combined with a restriction order or a hospital direction.
239. Section 53C provides that an interim compulsion order ceases to have effect if either a compulsion order or a hospital direction is made in relation to the offender, or if the court deals with them in some other way.
240. Section 53D provides that, if an interim compulsion order ceases to have effect other than in the circumstances provided for in section 53B(8) or 53C, the court can deal with the offender in any way in which it could originally have done. It cannot, however, make another interim compulsion order.