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

2003 asp 13

PART 8

MENTALLY DISORDERED PERSONS: CRIMINAL PROCEEDINGS

CHAPTER 1

PRE-SENTENCE ORDERS

Assessment orders and treatment orders

130 Mentally disordered persons subject to criminal proceedings: assessment and treatment

After section 52 of the 1995 Act there shall be inserted—

"Remit of mentally disordered persons from district court

52A Remit of certain mentally disordered persons from district court to sheriff court

Where—

(a) a person has been charged in a district court with an offence punishable by imprisonment; and

(b) it appears to the court that the person has a mental disorder,

the district court shall remit the person to the sheriff in the manner provided by section 7(9) and (10) of this Act.

Status: *Point in time view as at 05/10/2005.*
Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Assessment orders

52B Prosecutor's power to apply for assessment order

(1) Where—

(a) a person has been charged with an offence;

(b) a relevant disposal has not been made in the proceedings in respect of the offence; and

(c) it appears to the prosecutor that the person has a mental disorder,

the prosecutor may apply to the court for an order under section 52D(2) of this Act (in this Act referred to as an "assessment order") in respect of that person.

(2) Where the prosecutor applies for an assessment order under subsection (1) above, the prosecutor shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.

(3) Those persons are—

(a) the person in respect of whom the application is made;

(b) any solicitor acting for the person; and

(c) in a case where the person is in custody, the Scottish Ministers.

(4) In this section—

"court" means any court, other than a district court, competent to deal with the case; and

"relevant disposal" means—

(a) the liberation in due course of law of the person charged;

(b) the desertion of summary proceedings *pro loco et tempore* or *simpliciter*;

(c) the desertion of solemn proceedings *simpliciter*;

(d) the acquittal of the person charged; or

(e) the conviction of the person charged.

52C Scottish Ministers' power to apply for assessment order

(1) Where—

(a) a person has been charged with an offence;

(b) the person has not been sentenced;

(c) the person is in custody; and

(d) it appears to the Scottish Ministers that the person has a mental disorder,

the Scottish Ministers may apply to the court for an assessment order in respect of that person.

(2) Where the Scottish Ministers apply for an order under subsection (1) above, they shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.

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(3) Those persons are—

(a) the person in respect of whom the application is made;

(b) any solicitor acting for the person; and

(c) in a case where a relevant disposal has not been made in the proceedings in respect of the offence with which the person is charged, the prosecutor.

(4) In this section, "court" and "relevant disposal" have the same meanings as in section 52B of this Act.

52D Assessment order

(1) This section applies where an application for an assessment order is made under section 52B(1) or 52C(1) of this Act.

(2) If the court is satisfied—

(a) on the written or oral evidence of a medical practitioner, 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 (5) below, make an assessment order authorising the measures mentioned in subsection (6) below and specifying any matters to be included in the report under section 52G(1) of this Act.

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

(a) that there are reasonable grounds for believing—

(i) that the person in respect of whom the application is made has a mental disorder;

(ii) that it is necessary to detain the person in hospital to assess whether the conditions mentioned in subsection (7) below are met in respect of the person; and

(iii) that if the assessment order were not made there would be a significant risk to the health, safety or welfare of the person or a significant risk to the safety of any other person;

(b) that the hospital proposed by the medical practitioner is suitable for the purpose of assessing whether the conditions mentioned in subsection (7) below are met in respect of the person;

(c) that, if an assessment order were made, the person 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 to carry out the assessment mentioned in paragraph (b) above 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 with which the person in respect of whom the application is made is charged or, as the case may be, of which the person was convicted); and

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

(5) The court may make an assessment order only if the person in respect of whom the application is made has not been sentenced.

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(6) The measures are—

(a) in the case of a person who, when the assessment 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 person 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 the period of 28 days beginning with the day on which the order is made, of the person in the specified hospital; and

(c) during the period of 28 days beginning with the day on which the order is made, the giving to the person, in accordance with Part 16 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), of medical treatment.

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

(a) that the person in respect of whom the application is made 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,

is available for the person; and

(c) that if the person were not provided with such medical treatment there would be a significant risk—

(i) to the health, safety or welfare of the person; or

(ii) to the safety of any other person.

(8) The court may make an assessment order in the absence of the person in respect of whom the application is made only if—

(a) the person 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 person to be brought before it.

(9) An assessment order may include such directions as the court thinks fit for the removal of the person subject to the order to, and detention of the person in, a place of safety pending the person's admission to the specified hospital.

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

(a) the person subject to the order;

(b) any solicitor acting for the person;

(c) in a case where—

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(i) the person has been charged with an offence; and

(ii) a relevant disposal has not been made in the proceedings in respect of the offence,

the prosecutor;

(d) in a case where the person, immediately before the order was made, was in custody, the Scottish Ministers; and

(e) the Mental Welfare Commission.

(11) In this section—

"court" has the same meaning as in section 52B of this Act;

"medical treatment" has the meaning given by section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);

"relevant disposal" has the same meaning as in section 52B of this Act; and

"specified" means specified in the assessment order.

52E Assessment order made ex proprio motu: application of section 52D

(1) Where—

(a) a person has been charged with an offence;

(b) the person has not been sentenced; and

(c) it appears to the court that the person has a mental disorder,

the court may, subject to subsections (2) and (3) below, make an assessment order in respect of that person.

(2) The court may make an assessment order under subsection (1) above only if it would make one under subsections (2) to (11) of section 52D of this Act; and those subsections shall apply for the purposes of subsection (1) above as they apply for the purposes of subsection (1) of that section, references in those subsections to the person in respect of whom the application is made being construed as references to the person in respect of whom it is proposed to make an assessment order.

(3) An assessment order made under subsection (1) above shall, for the purposes of this Act and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), be treated as if made under section 52D(2) of this Act.

(4) In this section, "court" has the same meaning as in section 52B of this Act.

52F Assessment order: supplementary

(1) If, before the expiry of the period of 7 days beginning with the day on which an assessment order is made—

(a) in the case of a person who, immediately before the order was made, was in custody, it appears to the Scottish Ministers; or

(b) in any other case, it appears to the court,

that, by reason of emergency or other special circumstances, it is not reasonably practicable for the person to be admitted to the hospital specified in the order, the Scottish Ministers, or, as the case may be, the court, may direct that the person be admitted to the hospital specified in the direction.

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(2) Where 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 person subject to the assessment order of the making of the direction.

(3) Where the Scottish Ministers make a direction under subsection (1) above, they shall, as soon as reasonably practicable after making the direction, inform—

(a) the court;

(b) the person having custody of the person subject to the assessment order; and

(c) in a case where—

(i) the person has been charged with an offence; and

(ii) a relevant disposal has not been made in the proceedings in respect of the offence,

the prosecutor,

of the making of the direction.

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

(5) In this section—

"court" means the court which made the assessment order; and

"relevant disposal" has the same meaning as in section 52B of this Act.

52G Review of assessment order

(1) The responsible medical officer shall, before the expiry of the period of 28 days beginning with the day on which the assessment order is made, submit a report in writing to the court—

(a) as to whether the conditions mentioned in section 52D(7) of this Act are met in respect of the person subject to the order; and

(b) as to any matters specified by the court under section 52D(2) of this Act.

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

(a) to the person in respect of whom the report is made;

(b) to any solicitor acting for the person;

(c) in a case where—

(i) the person has been charged with an offence; and

(ii) a relevant disposal has not been made in the proceedings in respect of the offence,

to the prosecutor; and

(d) to the Scottish Ministers.

(3) Subject to subsection (4) below, the court shall, on receiving a report submitted under subsection (1) above, revoke the assessment order and—

(a) subject to subsections (7) and (8) below, make a treatment order; or

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(b) commit the person to prison or such other institution to which the person might have been committed had the assessment order not been made or otherwise deal with the person as the court considers appropriate.

(4) If, on receiving a report submitted under subsection (1) above, the court is satisfied that further time is necessary to assess whether the conditions mentioned in section 52D(7) of this Act are met in respect of the person subject to the assessment order, it may, on one occasion only, make an order extending the assessment order for a period not exceeding 7 days beginning with the day on which the order otherwise would cease to authorise the detention of the person in hospital.

(5) The court may, under subsection (4) above, extend an assessment order in the absence of the person subject to the order only if—

(a) the person 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 person to be brought before it.

(6) Where the court makes an order under subsection (4) above, it shall, as soon as reasonably practicable after making the order, give notice of the making of the order to—

(a) the persons mentioned in paragraphs (a) and (b) of subsection (2) above;

(b) in a case where—

(i) the person has been charged with an offence; and

(ii) a relevant disposal has not been made in the proceedings in respect of the offence,

the prosecutor;

(c) the Scottish Ministers; and

(d) the person's responsible medical officer.

(7) The court shall make a treatment order under subsection (3)(a) above only if it would make one under subsections (2) to (10) of section 52M of this Act; and those subsections shall apply for the purposes of subsection (3)(a) above as they apply for the purposes of that section, references in those subsections to the person in respect of whom the application is made being construed as references to the person in respect of whom it is proposed to make a treatment order.

(8) A treatment order made under subsection (3)(a) above shall, for the purposes of this Act and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), be treated as if made under section 52M(2) of this Act.

(9) The responsible medical officer shall, where that officer is satisfied that there has been a change of circumstances since the assessment order was made which justifies the variation of the order, submit a report to the court in writing.

(10) Where a report is submitted under subsection (9) above, the court shall—

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(a) if satisfied that the person need not be subject to an assessment order, revoke the order and take any action mentioned in subsection (3)(b) above; or

(b) if not so satisfied—

(i) confirm the order;

(ii) vary the order; or

(iii) revoke the order and take any action mentioned in subsection (3)(b) above.

(11) Sections 52D, 52F, 52H and 52J of this Act and subsections (1) to (3) above apply to the variation of an order under subsection (10)(b)(ii) above as they apply to an assessment order.

(12) In this section—

"court" means the court which made the assessment order;

"relevant disposal" has the same meaning as in section 52B of this Act; and

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

52H Early termination of assessment order

(1) This section applies where—

(a) in the case of a person who, when the assessment order is made, has not been removed to the hospital specified in the order, the period of 7 days beginning with the day on which the order is made has not expired;

(b) in the case of a person—

(i) who, when the assessment order is made, has been admitted to the hospital specified in the order; or

(ii) who has been removed under paragraph (a) of subsection (6) of section 52D of this Act to the hospital so specified,

the period of 28 days beginning with the day on which the order is made has not expired; or

(c) in the case of a person in respect of whom the court has made an order under section 52G(4) of this Act extending the assessment order for a period, the period for which the order was extended has not expired.

(2) An assessment order shall cease to have effect on the occurrence of any of the following events—

(a) the making of a treatment order in respect of the person subject to the assessment order;

(b) in a case where—

(i) the person subject to the assessment order has been charged with an offence; and

(ii) a relevant disposal had not been made in the proceedings in respect of that offence when the order was made,

the making of a relevant disposal in such proceedings;

(c) in a case where the person subject to the assessment order has been convicted of an offence but has not been sentenced—

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(i) the deferral of sentence by the court under section 202(1) of this Act;

(ii) the making of one of the orders mentioned in subsection (3) below or

(iii) the imposition of any sentence.

(3) The orders are—

(a) an interim compulsion order;

(b) a compulsion order;

(c) a guardianship order;

(d) a hospital direction;

(e) any order under section 57 of this Act; or

(f) a probation order which includes a requirement imposed by virtue of section 230(1) of this Act.

(4) In this section, "relevant disposal" has the same meaning as in section 52B of this Act.

52J Power of court on assessment order ceasing to have effect

(1) Where, otherwise than by virtue of section 52G(3) or (10) or 52H(2) of this Act, an assessment order ceases to have effect the court shall commit the person who was subject to the order to prison or such other institution to which the person might have been committed had the order not been made or otherwise deal with the person as the court considers appropriate.

(2) In this section, "court" has the same meaning as in section 52B of this Act.

Treatment orders

52K Prosecutor's power to apply for treatment order

(1) Where—

(a) a person has been charged with an offence;

(b) a relevant disposal has not been made in the proceedings in respect of the offence; and

(c) it appears to the prosecutor that the person has a mental disorder,

the prosecutor may apply to the court for an order under section 52M of this Act (in this Act referred to as a "treatment order") in respect of that person.

(2) Where the prosecutor applies for a treatment order under subsection (1) above, the prosecutor shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.

(3) Those persons are—

(a) the person in respect of whom the application is made;

(b) any solicitor acting for the person; and

(c) in a case where the person is in custody, the Scottish Ministers.

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(4) In this section, "court" and "relevant disposal" have the same meanings as in section 52B of this Act.

52L Scottish Ministers' power to apply for treatment order

(1) Where—
- (a) a person has been charged with an offence;
- (b) the person has not been sentenced;
- (c) the person is in custody; and
- (d) it appears to the Scottish Ministers that the person has a mental disorder,

the Scottish Ministers may apply to the court for a treatment order in respect of that person.

(2) Where the Scottish Ministers apply for an order under subsection (1) above, they shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.

(3) Those persons are—
- (a) the person in respect of whom the application is made;
- (b) any solicitor acting for the person; and
- (c) in a case where a relevant disposal has not been made in the proceedings in respect of the offence with which the person is charged, the prosecutor.

(4) In this section, "court" and "relevant disposal" have the same meanings as in section 52B of this Act.

52M Treatment order

(1) This section applies where an application for a treatment order is made under section 52K(1) or 52L(1) of this Act.

(2) If the court is satisfied—
- (a) on the written or oral evidence of two medical practitioners, 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 (5) below, make a treatment order authorising the measures mentioned in subsection (6) below.

(3) The matters referred to in subsection (2)(a) above are—
- (a) that the conditions mentioned in subsection (7) of section 52D of this Act are met in relation to the person in respect of whom the application is made;
- (b) that the hospital proposed by the approved medical practitioner and the medical practitioner is suitable for the purpose of giving medical treatment to the person; and

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(c) that, if a treatment order were made, such person 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.

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

(a) all the circumstances (including the nature of the offence with which the person in respect of whom the application is made is charged or, as the case may be, of which the person was convicted); and

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

(5) The court may make a treatment order only if the person in respect of whom the application is made has not been sentenced.

(6) The measures are—

(a) in the case of a person who, when the treatment 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 person 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 of the person in the specified hospital; and

(c) the giving to the person, in accordance with Part 16 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), of medical treatment.

(7) The court may make a treatment order in the absence of the person in respect of whom the application is made only if—

(a) the person 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 person to be brought before it.

(8) A treatment order may include such directions as the court thinks fit for the removal of the person subject to the order to, and detention of the person in, a place of safety pending the person's admission to the specified hospital.

(9) The court shall, as soon as reasonably practicable after making a treatment order, give notice of the making of the order to—

(a) the person subject to the order;

(b) any solicitor acting for the person;

(c) in a case where—

(i) the person has been charged with an offence; and

(ii) a relevant disposal has not been made in the proceedings in respect of the offence,

the prosecutor;

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(d) in a case where the person, immediately before the order was made—
(i) was in custody; or
(ii) was subject to an assessment order and, immediately before that order was made, was in custody,
the Scottish Ministers; and
(e) the Mental Welfare Commission.

(10) In this section—
"court" has the same meaning as in section 52B of this Act;
"medical treatment" has the same meaning as in section 52D of this Act; and
"specified" means specified in the treatment order.

52N Treatment order made ex proprio motu: application of section 52M

(1) Where—
(a) a person has been charged with an offence;
(b) the person has not been sentenced; and
(c) it appears to the court that the person has a mental disorder,
the court may, subject to subsections (2) and (3) below, make a treatment order in respect of that person.

(2) The court may make a treatment order under subsection (1) above only if it would make one under subsections (2) to (10) of section 52M of this Act; and those subsections shall apply for the purposes of subsection (1) above as they apply for the purposes of subsection (1) of that section, references in those subsections to the person in respect of whom the application is made being construed as references to the person in respect of whom it is proposed to make a treatment order.

(3) A treatment order made under subsection (1) above shall, for the purposes of this Act and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), be treated as if made under section 52M(2) of this Act.

(4) In this section, "court" has the same meaning as in section 52B of this Act.

52P Treatment order: supplementary

(1) If, before the expiry of the period of 7 days beginning with the day on which the treatment order is made—
(a) in the case of a person to whom subsection (2) below applies, it appears to the Scottish Ministers; or
(b) in any other case, it appears to the court,
that, by reason of emergency or other special circumstances, it is not reasonably practicable for the person to be admitted to the hospital specified in the order, the Scottish Ministers, or, as the case may be, the court, may direct that the person be admitted to the hospital specified in the direction.

(2) This subsection applies to—
(a) a person who is in custody immediately before the treatment order is made; or

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(b) a person—

(i) who was subject to an assessment order immediately before the treatment order is made; and

(ii) who was in custody immediately before that assessment order was made.

(3) Where 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 person subject to the treatment order of the making of the direction.

(4) Where the Scottish Ministers make a direction under subsection (1) above, they shall, as soon as reasonably practicable after making the direction, inform—

(a) the court;

(b) the person having custody of the person subject to the treatment order; and

(c) in a case where—

(i) the person has been charged with an offence; and

(ii) a relevant disposal has not been made in the proceedings in respect of the offence,

the prosecutor,

of the making of the direction.

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

(6) In this section—

"court" means the court which made the treatment order; and

"relevant disposal" has the same meaning as in section 52B of this Act.

52Q Review of treatment order

(1) The responsible medical officer shall, where that officer is satisfied—

(a) that any of the conditions mentioned in section 52D(7) of this Act are no longer met in respect of the person subject to the treatment order; or

(b) that there has otherwise been a change of circumstances since the order was made which makes the continued detention of the person in hospital by virtue of the order no longer appropriate,

submit a report in writing to the court.

(2) Where a report is submitted under subsection (1) above, the court shall—

(a) if satisfied that the person need not be subject to the treatment order—

(i) revoke the order; and

(ii) commit the person to prison or such other institution to which the person might have been committed had the order not been made or otherwise deal with the person as the court considers appropriate; or

(b) if not so satisfied—

(i) confirm the order;

(ii) vary the order; or

Status: *Point in time view as at 05/10/2005.*
Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(iii) revoke the order and take any action mentioned in paragraph (a)(ii) above.

(3) Sections 52M, 52P, this section and sections 52R and 52S of this Act apply to the variation of a treatment order under subsection (2)(b)(ii) above as they apply to a treatment order.

(4) In this section—

"court" means the court which made the treatment order; and

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

52R Termination of treatment order

(1) This section applies—

(a) where, in the case of a person who, when the treatment order is made, has not been removed to the hospital specified in the order, the period of 7 days beginning with the day on which the order is made has not expired; or

(b) in the case of a person—

(i) who, when the treatment order is made, has been admitted to the hospital specified in the order; or

(ii) who has been removed under paragraph (a) of subsection (6) of section 52M of this Act to the hospital so specified.

(2) A treatment order shall cease to have effect on the occurrence of any of the following events—

(a) in a case where—

(i) the person subject to the treatment order has been charged with an offence; and

(ii) a relevant disposal had not been made in the proceedings in respect of such offence when the order was made,

the making of a relevant disposal in such proceedings;

(b) in a case where the person subject to the treatment order has been convicted of an offence but has not been sentenced—

(i) the deferral of sentence by the court under section 202(1) of this Act;

(ii) the making of one of the orders mentioned in subsection (3) below; or

(iii) the imposition of any sentence.

(3) The orders are—

(a) an interim compulsion order;

(b) a compulsion order;

(c) a guardianship order;

(d) a hospital direction;

(e) any order under section 57 of this Act; or

(f) a probation order which includes a requirement imposed by virtue of section 230(1) of this Act.

Status: *Point in time view as at 05/10/2005.*
Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) In this section, "relevant disposal" has the same meaning as in section 52B of this Act.

52S Power of court on treatment order ceasing to have effect

(1) Where, otherwise than by virtue of section 52Q(2) or 52R(2) of this Act, a treatment order ceases to have effect the court shall commit the person who was subject to the order to prison or such other institution to which the person might have been committed had the order not been made or otherwise deal with the person as the court considers appropriate.

(2) In this section, "court" has the same meaning as in section 52B of this Act.

Prevention of delay in trials

52T Prevention of delay in trials: assessment orders and treatment orders

(1) Subsections (4) to (9) of section 65 of this Act shall apply in the case of a person **[**[F1]committed for an offence until liberated in due course of law**]** who is detained in hospital by virtue of an assessment order or a treatment order as those subsections apply in the case of an accused who is—
   (a) committed for an offence until liberated in due course of law; and
   (b) detained by virtue of that committal.

(2) Section 147 of this Act shall apply in the case of a person charged with an offence in summary proceedings who is detained in hospital by virtue of an assessment order or a treatment order as it applies in the case of an accused who is detained in respect of that offence.

(3) Any period during which, under—
   (a) section 221 (as read with sections 222 and 223) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13); or
   (b) section 224 (as read with sections 225 and 226) of that Act,

   a patient's detention is not authorised shall be taken into account for the purposes of the calculation of any of the periods mentioned in subsection (4) below.

(4) Those periods are—
   (a) the total periods of 80 days **[**[F2],**]** 110 days**[**[F3]and 140 days**]** referred to [F4]... in [F4]... subsection (4) of section 65 of this Act as applied by subsection (1) above;
   (b) those total periods as extended under subsection (5) [F4]... or, on appeal, under subsection (8) of that section as so applied;
   (c) the total of 40 days referred to in section 147 of this Act (prevention of delay in trials in summary proceedings) as applied by subsection (2) above; and
   (d) that period as extended under subsection (2) of that section or, on appeal, under subsection (3) of that section as so applied.

Status: *Point in time view as at 05/10/2005.*
Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Effect of assessment and treatment orders on pre-existing mental health orders

52U Effect of assessment order and treatment order on pre-existing mental health order

(1) This section applies where—

(a) a patient is subject to a relevant order; and

(b) an assessment order or a treatment order is made in respect of the patient.

(2) The relevant order shall[F4]... cease to authorise the measures specified in it for the period during which the patient is subject to the assessment order or, as the case may be, treatment order.

[F4](3) . . . . . .

(4) In this section, a "relevant order" means—

(a) an interim compulsory treatment order made under section 65(2) of the 2003 Act; and

(b) a compulsory treatment order made under section 64(4)(a) of that Act.".

Textual Amendments

F1 Words in s. 130 substituted (27.9.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, **sch. 1 para. 32(13)(a)(i)**

F2 Word in s. 130 substituted (27.9.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, sch. 1 para. 32(13)(a)(ii)**(iia)**

F3 Words in s. 130 inserted (27.9.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, sch. 1 para. 32(13)(a)(ii)**(iib)**

F4 Words in s. 130 repealed (27.9.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, **sch. 2**

Commencement Information

I1 S. 130 in force at 5.10.2005 by S.S.I. 2005/161, **art. 3** (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

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")—

Status: *Point in time view as at 05/10/2005.*
Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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

Status: *Point in time view as at 05/10/2005.*
Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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;

Status: *Point in time view as at 05/10/2005.*
Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

Status: *Point in time view as at 05/10/2005.*
Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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.".

Commencement Information

I2 S. 131 in force at 5.10.2005 by S.S.I. 2005/161, **art. 3** (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

Remand for inquiry into mental condition

132 Remand for inquiry into mental condition: time-limit for appeals

In section 200 of the 1995 Act (remand for inquiry into physical or mental condition), in subsection (9)—

(a) after the word "may", where it first occurs, there shall be inserted " , before the expiry of the period of 24 hours beginning with his remand, ";

(b) after the word "may", where it second occurs, there shall be inserted " , at any time during the period when the order for his committal, or, as the case may be, renewal of such order, is in force, "; and

(c) the words "within 24 hours of his remand or, as the case may be, committal," shall cease to have effect.

Status: *Point in time view as at 05/10/2005.*
Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I3 S. 132 in force at 5.10.2005 by S.S.I. 2005/161, **art. 3** (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

CHAPTER 2

DISPOSALS ON CONVICTION AND ACQUITTAL

Compulsion orders

133 Mentally disordered offenders: compulsion orders

After section 57 of the 1995 Act there shall be inserted—

"Compulsion orders

57A Compulsion order

(1) This section applies where a person (in this section and in sections **[**[F5]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,

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

Status: *Point in time view as at 05/10/2005.*
Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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 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;

(vi) make a probation order; or

(vii) make a community service 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 section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8);

"community care services" has the meaning given by section 5A(4) 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.

Status: *Point in time view as at 05/10/2005.*
Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

57B Compulsion order authorising detention in hospital or requiring residence at place: ancillary provision

(1) Where a compulsion order—

(a) authorises the detention of an offender in a specified hospital; or

(b) imposes a requirement on an offender to reside at a specified place,

this section authorises 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 or place, by any of the persons mentioned in subsection (2) below.

(2) Those persons are—

(a) a constable;

(b) 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; and

(c) a specified person.

(3) In this section, "specified" means specified in the compulsion order.

57C Mental health officer's report

(1) This section applies where the court is considering making a compulsion order in relation to an offender under section 57A of this Act.

(2) If directed to do so by the court, the mental health officer shall—

(a) subject to subsection (3) below, interview the offender; and

(b) prepare a report in relation to the offender in accordance with subsection (4) below.

(3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.

(4) The report shall state—

(a) the name and address of the offender;

(b) if known by the mental health officer, the name and address of the offender's primary carer;

(c) in so far as relevant for the purposes of section 57A of this Act, details of the personal circumstances of the offender; and

(d) any other information that the mental health officer considers relevant for the purposes of that section.

(5) In this section—

"carer", and "primary", in relation to a carer, have the meanings given by section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);

"mental health officer" means a person appointed (or deemed to be appointed) under section 32(1) of that Act; and

"named person" has the meaning given by section 329(1) of that Act.

57D Compulsion order: supplementary

(1) If, before the expiry of the period of 7 days beginning with the day on which a compulsion order authorising detention of the offender in a hospital 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 inform the person having custody of the offender; and
- (b) the Scottish Ministers make such a direction, they shall inform—
  - (i) the court; and
  - (ii) the person having custody of the offender.

(3) Where a direction is made under subsection (1) above, the 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 compulsion order.".

Textual Amendments

F5 Words in s. 133 substituted (27.9.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, **sch. 1 para. 32(14)**

Commencement Information

I4 S. 133 in force at 21.3.2005 for specified purposes by S.S.I. 2005/161, art. 2, **Sch. 1**

I5 S. 133 in force at 5.10.2005 in so far as not already in force by S.S.I. 2005/161, **art. 3** (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

Urgent detention of acquitted persons

134 Power of court to detain acquitted persons

After section 60B of the 1995 Act, there shall be inserted—

"60C Acquitted persons: detention for medical examination

(1) Subject to subsection (7) below, this section applies where a person charged with an offence is acquitted.

(2) If the court by or before which the person is acquitted 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 person; and
- (b) that it is not practicable to secure the immediate examination of the person by a medical practitioner,

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the court may, immediately after the person is acquitted, make an order authorising the measures mentioned in subsection (4) below for the purpose of enabling arrangements to be made for a medical practitioner to carry out a medical examination of the person.

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

(a) that the person 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,

is available for the person; and

(c) that if the person were not provided with such medical treatment there would be a significant risk—

(i) to the health, safety or welfare of the person; or

(ii) to the safety of any other person.

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

(a) the removal of the person to a place of safety by—

(i) a constable; or

(ii) a person specified by the court; and

(b) the detention, subject to subsection (6) below, of the person in that place of safety for a period of 6 hours beginning with the time at which the order under subsection (2) above is made.

(5) If the person absconds—

(a) while being removed to a place of safety under subsection (4) above; or

(b) from the place of safety,

a constable or the person specified by the court under paragraph (a) of that subsection may, at any time during the period mentioned in paragraph (b) of that subsection, take the person into custody and remove the person to a place of safety.

(6) An order under this section ceases to authorise detention of a person if, following the medical examination of the person, a medical practitioner grants—

(a) an emergency detention certificate under section 36 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13); or

(b) a short-term detention certificate under section 44 of that Act.

(7) This section does not apply—

(a) in a case where a declaration is made by virtue of section 54(6) of this Act that the person is acquitted on account of the person's insanity at the time of doing the act or making the omission constituting the offence with which the person was charged; or

(b) in a case where the court states under section 55(4) of this Act that the person is so acquitted on the ground of such insanity.

(8) In this section, "medical treatment" has the same meaning as in section 52D of this Act.

60D Notification of detention under section 60C

(1) This section applies where a person has been removed to a place of safety under section 60C of this Act.

(2) The court shall, before the expiry of the period of 14 days beginning with the day on which the order under section 60C(2) of this Act is made, ensure that the Mental Welfare Commission is given notice of the matters mentioned in subsection (3) below.

(3) Those matters are—

(a) the name and address of the person removed to the place of safety;

(b) the date on and time at which the person was so removed;

(c) the address of the place of safety;

(d) if the person is removed to a police station, the reason why the person was removed there; and

(e) any other matter that the Scottish Ministers may, by regulations made by statutory instrument, prescribe.

(4) The power conferred by subsection (3)(e) above may be exercised so as to make different provision for different cases or descriptions of case or for different purposes.

(5) A statutory instrument containing regulations under subsection (3)(e) above shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

Commencement Information

I6 S. 134 in force at 21.3.2005 for specified purposes by S.S.I. 2005/161, art. 2, **Sch. 1**

I7 S. 134 in force at 5.10.2005 in so far as not already in force by S.S.I. 2005/161, **art. 3** (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

Probation with a requirement of treatment

135 Amendment of 1995 Act: probation for treatment of mental disorder

In section 230 of the 1995 Act (probation orders requiring treatment for mental disorder)—

(a) in subsection (1)—

(i) at the beginning there shall be inserted “ Subject to subsection (3) below, ”; and

(ii) the words “, not extending beyond 12 months from the date of the requirement,” shall cease to have effect; and

(b) for subsection (3) there shall be substituted—

“(3) A court may make a probation order including a requirement under subsection (1) above only if it is satisfied—

(a) on the written or oral evidence of the registered medical practitioner or chartered psychologist by whom or under

whose direction the treatment intended to be specified in the order is to be provided, that the treatment is appropriate; and

(b) that arrangements have been made for that treatment, including, where the offender is to be treated as a resident patient, arrangements for his reception in the hospital intended to be specified in the order.".

Commencement Information

I8 S. 135 in force at 5.10.2005 by S.S.I. 2005/161, **art. 3** (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

CHAPTER 3

MENTALLY DISORDERED PRISONERS

136 Transfer of prisoners for treatment for mental disorder

(1) This section applies where a person (in this section referred to as the "prisoner") is serving a sentence of imprisonment.

(2) If the Scottish Ministers are satisfied, on the written reports of an approved medical practitioner and a medical practitioner as to the matters mentioned in subsection (3) below, they may, subject to subsection (5) below, make a direction (referred to in this Act as a "transfer for treatment direction") authorising the measures mentioned in subsection (6) below.

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

(a) that the conditions mentioned in subsection (4) below are met in respect of the prisoner;

(b) that the prisoner could be admitted to the hospital to be specified in the direction before the expiry of the period of 7 days beginning with the day on which the direction is made; and

(c) that the hospital to be so specified is suitable for the purpose of giving medical treatment to the prisoner.

(4) The conditions referred to in subsection (3)(a) above are—

(a) that the prisoner 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,

is available for the prisoner;

(c) that if the prisoner were not provided with such medical treatment there would be a significant risk—

(i) to the health, safety or welfare of the prisoner; or

(ii) to the safety of any other person; and

(d) that the making of a transfer for treatment direction in respect of the prisoner is necessary.

Status: *Point in time view as at 05/10/2005.*
Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) A transfer for treatment direction may authorise detention in a state hospital only if, on the written reports of the approved medical practitioner and the medical practitioner mentioned in subsection (2) above, it appears to the Scottish Ministers—

(a) that the prisoner 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.

(6) The measures are—

(a) the removal, before the expiry of the period of 7 days beginning with the day on which the direction is made, of the prisoner 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 of the prisoner in the specified hospital; and

(c) the giving to the prisoner, in accordance with Part 16 of this Act, of medical treatment.

(7) The Scottish Ministers shall be satisfied as to the condition mentioned in subsection (4)(a) above only if the descriptions of the prisoner's mental disorder by each of the medical practitioners mentioned in subsection (2) above specifies, by reference to the appropriate paragraph (or paragraphs) of the definition of "mental disorder" in section 328(1) of this Act, at least one type of mental disorder that the prisoner has that is also specified by the other.

(8) A transfer for treatment direction—

(a) shall specify, by reference to the appropriate paragraph (or paragraphs) of the definition of "mental disorder" in section 328(1) of this Act, the type (or types) of mental disorder that each of the medical practitioners mentioned in subsection (2) above specifies that the prisoner has that is also specified by the other; and

(b) may include such directions as the Scottish Ministers think fit for the removal of the prisoner to, and the detention of the prisoner in, a place of safety pending the prisoner's admission to the specified hospital.

(9) In subsection (1) above, the reference to a prisoner serving a sentence of imprisonment includes a reference—

(a) to a prisoner detained in pursuance of any sentence or order for detention made by a court (other than an order under section 52D(2), 52M(2), 53(2), 54, 57(2), 57A(2), 118(5) or 190 of the 1995 Act); and

(b) to a prisoner committed by a court to prison in default of payment of any fine to be paid on the prisoner's conviction.

(10) In this section—

"place of safety" has the same meaning as in section 300 of this Act; and

"specified" means specified in the transfer for treatment direction.

Status: *Point in time view as at 05/10/2005.*
Changes to legislation: *Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C1 S. 136 applied (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), arts. 1(1), **13**

Commencement Information

I9 S. 136 in force at 5.10.2005 by S.S.I. 2005/161, **art. 3** (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

Status:
Point in time view as at 05/10/2005.

Changes to legislation:
Mental Health (Care and Treatment) (Scotland) Act 2003, Part 8 is up to date with all changes known to be in force on or before 29 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.