



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

## 2003 asp 13

### PART 8

#### MENTALLY DISORDERED PERSONS: CRIMINAL PROCEEDINGS

#### 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;
  - [<sup>F1</sup>(aa) that—
    - (i) a mental health officer has agreed to the making of the direction, or
    - (ii) it has been impracticable to obtain the agreement of a mental health officer;]
  - (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.

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*Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Section 136 is up to date with all changes known to be in force on or before 09 May 2023. 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) View outstanding changes*

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- (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.
- (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—

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- (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.

[<sup>F2</sup>(11) A reference in this section to a hospital may be read as a reference to a hospital unit.

(12) For the purpose of subsection (11) above, “hospital unit” means any part of a hospital which is treated as a separate unit.]

#### Textual Amendments

- F1** S. 136(3)(aa) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. **34(2)**, 61(2); S.S.I. 2017/197, art. 2, sch.
- F2** S. 136(11)(12) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. **12(2)**, 61(2); S.S.I. 2017/197, art. 2, sch.

#### 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

- I1** 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)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 136(2) modified (temp.) by [2020 c. 7 Sch. 9 para. 6](#)
- s. 136(3) modified (temp.) by [2020 c. 7 Sch. 9 para. 8](#)
- s. 136(6) modified (temp.) by [2020 c. 7 Sch. 9 para. 8](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)