

MENTAL HEALTH (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE & A SUMMARY OF THE ACT

Part Two – Criminal Cases

Section 39: Detention under compulsion orders

Amendment of [section 57](#)

115. Section 39 of the Act amends section 57 of the 1995 Act. Section 57(2) of the 1995 Act sets out the disposals available to the court in cases where the accused has been acquitted on grounds of lack of criminal responsibility (section 51A) or where the accused has been found to be unfit for trial (section 53F) and has been found to have committed the acts or omissions constituting the offence following an examination of facts (section 55). Section 57(2) sets out a number of different orders which the court can make in such cases. This includes at section 57(2)(a) making a compulsion order authorising the detention of the person in hospital and at section 57(2)(b) a restriction order in addition to a compulsion order made under section 57(2)(a).
116. [Section 39](#) substitutes the words “authorising the detention of the person in a hospital” in section 57(2)(a) of the 1995 Act with the words “(whether or not authorising the detention of the person in a hospital)”. This has the effect of clarifying that either a community-based compulsion order (where the offender is not detained in hospital) or a compulsion order authorising detention in hospital can be made in respect of a person who is unfit for trial or acquitted on grounds of lack of criminal responsibility.
117. [Section 39](#) also makes a consequential amendment to section 57(2)(b) of the 1995 Act, by substituting paragraph (b) for the words “subject to subsection (4A) below, make a restriction order in respect of the person (that is, in addition to a compulsion order authorising the detention of the person in a hospital)”. This will have the effect of providing that a restriction order may only be made where a compulsion order authorising detention of the person in hospital is also made.