



# Mental Health (Scotland) Act 2015

## 2015 asp 9

### PART 2

#### CRIMINAL CASES

##### *Making and effect of disposals*

#### **38 Making certain orders in remand cases**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In each place where they occur as follows, before the words “in custody” there is inserted “remanded”—
  - (a) in section 52B (prosecutor’s power to apply for assessment order), in subsection (3)(c),
  - (b) in section 52C (Scottish Ministers’ power to apply for assessment order), in subsection (1)(c),
  - (c) in section 52D (assessment order), in subsection (10)(d),
  - (d) in section 52F (assessment order: supplementary), in subsection (1)(a),
  - (e) in section 52K (prosecutor’s power to apply for treatment order), in subsection (3)(c),
  - (f) in section 52L (Scottish Ministers’ power to apply for treatment order), in subsection (1)(c),
  - (g) in section 52M (treatment order), in subsection (9)(d)(i) and (ii),
  - (h) in section 52P (treatment order: supplementary), in subsection (2)(a) and (b)(ii).

#### **39 Detention under compulsion orders**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 57 (disposal of case where accused found not criminally responsible or unfit for trial), in subsection (2)—

- (a) in paragraph (a), for the words “authorising the detention of the person in a hospital” there is substituted “(whether or not authorising the detention of the person in a hospital)”,
- (b) for paragraph (b) there is substituted—
  - “(b) 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);”.

#### **40 Periods for assessment orders**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 52D (assessment order)—
  - (a) in subsection (6)—
    - (i) in paragraph (a), for the words “expiry of the period of” there is substituted “end of the day following the”,
    - (ii) in each of paragraphs (b) and (c), for the words “period of 28 days beginning with the day on which the order is made” there is substituted “relevant period given by subsection (6A) below”,
  - (b) after subsection (6) there is inserted—
 

“(6A) For the purpose of subsection (6)(b) and (c) above, the relevant period is the period—

    - (a) beginning with the day on which the order is made,
    - (b) expiring at the end of the 28 days following that day.”.
- (3) In section 52F (assessment order: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (4) In section 52G (review of assessment order)—
  - (a) in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”,
  - (b) in subsection (4), for words from “7 days” to the end there is substituted “the relevant period given by subsection (4A) below”,
  - (c) after subsection (4) there is inserted—
 

“(4A) For the purpose of subsection (4) above, the relevant period is the period—

    - (a) beginning with the day on which the order would otherwise cease to authorise the detention of the person in hospital,
    - (b) expiring at the end of the 14 days following that day.”.
- (5) In section 52H (early termination of assessment order)—
  - (a) in subsection (1)—
    - (i) in paragraph (a), for the words “period of 7 days beginning with the day on which the order is made” there is substituted “relevant period given by subsection (1A) below”,
    - (ii) in paragraph (b), for the words “period of 28 days beginning with the day on which the order is made” there is substituted “relevant period given by subsection (1A) below”,
  - (b) after subsection (1) there is inserted—

“(1A) For the purpose of subsection (1)(a) and (b) above, the relevant period is the period—

- (a) beginning with the day on which the order is made,
- (b) expiring—
  - (i) as regards subsection (1)(a) above, at the end of the 7 days following the day mentioned in paragraph (a) of this subsection,
  - (ii) as regards subsection (1)(b) above, at the end of the 28 days following the day mentioned in paragraph (a) of this subsection.”.

#### **41 Periods for treatment orders**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 52M (treatment order)—
  - (a) in subsection (3)(c), for the words “expiry of the period of” there is substituted “end of the day following the”,
  - (b) in subsection (6)(a), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (3) In section 52P (treatment order: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (4) In section 52R (termination of treatment order)—
  - (a) in subsection (1)(a), for the words “period of 7 days beginning with the day on which the order is made” there is substituted “relevant period given by subsection (1A) below”,
  - (b) after subsection (1) there is inserted—

“(1A) For the purpose of subsection (1)(a) above, the relevant period is the period—

    - (a) beginning with the day on which the order is made,
    - (b) expiring at the end of the 7 days following that day.”.

#### **42 Periods for short-term compulsion**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 53 (interim compulsion order)—
  - (a) in subsection (3)(c), for the words “expiry of the period of” there is substituted “end of the day following the”,
  - (b) in subsection (8)—
    - (i) in paragraph (a), for the words “expiry of the period of” there is substituted “end of the day following the”,
    - (ii) in paragraph (b), for the words “12 weeks beginning with the day on which the order is made” there is substituted “the relevant period given by subsection (8A) below”,
    - (iii) in paragraph (c), for the words “period of 12 weeks beginning with the day on which the order is made” there is substituted “relevant period given by subsection (8A) below”,

- (c) after subsection (8) there is inserted—
  - “(8A) For the purpose of subsection (8)(b) and (c) above, the relevant period is the period—
    - (a) beginning with the day on which the order is made,
    - (b) expiring at the end of the 12 weeks following that day.”
- (3) In section 53A (interim compulsion order: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (4) In section 53B (review and extension of interim compulsion order)—
  - (a) in subsection (4), for the words from “(not exceeding” to “not made)” there is substituted “not exceeding the relevant period given by subsection (4A) below”,
  - (b) after subsection (4) there is inserted—
    - “(4A) For the purpose of subsection (4) above, the relevant period is the period—
      - (a) beginning with the day on which the order would cease to have effect if it were not extended,
      - (b) expiring at the end of the 12 weeks following that day.”
  - (c) in subsection (5), for the words “12 months beginning with the day on which the order was first made.” there is substituted “the period—
    - (a) beginning with the day on which the order was first made,
    - (b) expiring at the end of the 12 months following that day.”
- (5) In section 54 (unfitness for trial: further provision), in subsection (2B)(a), for the words “expiry of the period of” there is substituted “end of the day following the”.

#### **43 Periods for compulsion orders**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 57A (compulsion order)—
  - (a) in subsection (2), for the words “period of 6 months beginning with the day on which the order is made” there is substituted “relevant period given by subsection (2A) below”,
  - (b) after subsection (2) there is inserted—
    - “(2A) For the purpose of subsection (2) above, the relevant period is the period—
      - (a) beginning with the day on which the order is made,
      - (b) expiring at the end of the 6 months following that day.”
  - (c) in subsection (5)(b), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (3) In section 57B (compulsion order authorising detention in hospital or requiring residence at place: ancillary provision), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (4) In section 57D (compulsion order: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.

#### **44 Periods for hospital directions**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 59A (hospital direction)—
  - (a) in subsection (4)(b), for the words “expiry of the period of” there is substituted “end of the day following the”,
  - (b) in subsection (7)(a), for the words “expiry of the period of” there is substituted “end of the day following the”.
- (3) In section 59C (hospital direction: supplementary), in subsection (1), for the words “expiry of the period of” there is substituted “end of the day following the”.

#### *Variation of certain orders*

#### **45 Variation of interim compulsion orders**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 53B (review and extension of interim compulsion order)—
  - (a) in subsection (4)—
    - (i) the words from “if satisfied” to the end become paragraph (a),
    - (ii) after that paragraph (as so numbered) there is inserted “, and
  - (b) if it seems appropriate to do so, direct that the offender be admitted to the hospital specified in the direction.”,
  - (b) in subsection (6), after the word “order” there is inserted “or make a direction specifying a hospital”,
  - (c) after subsection (7) there is inserted—

“(7A) Where a direction is made under subsection (4) above, the interim compulsion order has effect as if the hospital specified in the direction were the hospital specified in the order.”.

#### **46 Transfer of patient to suitable hospital**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) The italic heading immediately preceding section 61 becomes “*Miscellaneous provision*”.
- (3) After section 61 there is inserted—

#### **“61A Transfer of person to suitable hospital**

- (1) Subsection (2) below applies in relation to a person who is subject to—
  - (a) an assessment order,
  - (b) a treatment order,
  - (c) an interim compulsion order, or
  - (d) a temporary compulsion order (see section 54(1)(c) of this Act).

- (2) The person’s responsible medical officer may transfer the person from the specified hospital to another hospital.
- (3) The responsible medical officer may transfer the person only if satisfied that, for the purpose for which the order in question is made—
  - (a) the specified hospital is not suitable, and
  - (b) the other hospital is suitable.
- (4) In considering the suitability of each hospital, the responsible medical officer is to have particular regard to the specific requirements and needs in the person’s case.
- (5) As far before the transfer as practicable, the responsible medical officer must—
  - (a) inform the person of the reason for the transfer,
  - (b) notify the managers of the specified hospital, and
  - (c) obtain the consent of—
    - (i) the managers of the other hospital, and
    - (ii) the Scottish Ministers.
- (6) As soon after the transfer as practicable, the responsible medical officer must notify—
  - (a) any solicitor known by the officer to be acting for the person, and
  - (b) the court which made the order in question.
- (7) A person may be transferred under subsection (2) above only once with respect to the order in question.
- (8) Where a person is transferred under subsection (2) above, the order in question has effect as if the other hospital were the specified hospital.
- (9) In this section—
 

“managers” has the meaning given by section 329(1) of the Mental Health (Treatment and Care) Scotland) Act 2003,

“responsible medical officer” has the meaning given by section 329(4) of that Act,

“specified hospital” means hospital to which the person is admitted by virtue of the order in question.”.

*Specification of hospital units*

**47 Specification of unit**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) After section 61 there is inserted—

**“61B Specification of hospital unit**

- (1) A reference in this Part to a hospital may be read as a reference to a hospital unit.

- (2) In the operation of section 61A of this Act in relation to a transfer from one hospital unit to another within the same hospital—
  - (a) subsection (2) of that section applies by virtue of subsection (1) of that section where the order in question specifies the hospital unit in which the person is to be detained,
  - (b) in subsection (5) of that section—
    - (i) paragraph (b) is to be ignored,
    - (ii) in paragraph (c)(i), the reference to the managers of the other hospital is to be read as a reference to the managers of the hospital in which the person is detained.
- (3) For the purposes of this section, “hospital unit” means any part of a hospital which is treated as a separate unit.”.

#### **48      Transfer from specified unit**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 218 there is inserted—

##### **“218A Transfer of patient from specified hospital unit**

- (1) Subsection (2) below applies where—
  - (a) a patient is subject to—
    - (i) a compulsion order and a restriction order,
    - (ii) a hospital direction, or
    - (iii) a transfer for treatment direction, and
  - (b) that order or (as the case may be) direction specifies the hospital unit in which the patient is to be detained.
- (2) If the condition in subsection (3) below is satisfied, the managers of the hospital in which the patient is detained may transfer the patient to another hospital unit within the same hospital.
- (3) The condition is that the Scottish Ministers consent to the transfer.
- (4) In relation to a transfer or proposed transfer under subsection (2) above, section 218(4) to (14) of this Act applies subject to the following modifications—
  - (a) a reference to section 218(2) is to be read as a reference to subsection (2) above,
  - (b) in subsection (10)(a), a reference to section 218(3) is to be read as a reference to subsection (3) above,
  - (c) in subsection (12), a reference to the hospital from which the patient is transferred is to be read as a reference to the hospital in which the patient is detained,
  - (d) in subsections (13)(b) and (14), a reference to the hospital to which the patient is transferred is to be read as a reference to the hospital unit to which the patient is transferred.
- (5) For the purposes of this section, “hospital unit” means any part of a hospital which is treated as a separate unit.”.

**49 Consequential repeals**

The following enactments are repealed—

- (a) section 9 of the Crime and Punishment (Scotland) Act 1997,
- (b) paragraph 66 of schedule 7 to the Criminal Justice and Licensing (Scotland) Act 2010.

*Miscellaneous amendments***50 Information on extension of compulsion order**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 153 there is inserted—

**“153A Further information on extension of compulsion order**

- (1) Subsections (2) and (3) below apply where—
  - (a) a mental health officer receives notice of a determination under section 152 of this Act from a patient’s responsible medical officer, and
  - (b) the Tribunal is required by virtue of section 165(2)(a) of this Act to review the determination.
- (2) The mental health officer must—
  - (a) prepare a record stating the information mentioned in subsection (4) below,
  - (b) submit the record to the Tribunal, and
  - (c) at the same time as submitting the record to the Tribunal, send to the persons mentioned in subsection (6) below—
    - (i) a copy of the record, and
    - (ii) a statement of the matters mentioned in subsection (5) below.
- (3) At the same time as submitting the record to the Tribunal, the mental health officer must send a copy of the record to the patient except where the officer considers that doing so carries a risk of significant harm to the patient or others.
- (4) The information to be stated in the record is—
  - (a) the name and address of the patient,
  - (b) if known by the mental health officer, the name and address of—
    - (i) the patient’s named person, and
    - (ii) the patient’s primary carer,
  - (c) the things done by the mental health officer in compliance with the requirements in subsection (2) of section 151 of this Act (and, if by virtue of subsection (3) of that section the first-listed one has not been complied with, the reason why compliance with it was impracticable),
  - (d) so far as relevant to the extension of the compulsion order—
    - (i) the details of the personal circumstances of the patient, and

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- (ii) if known by the mental health officer, the details of any advance statement made by the patient (and not withdrawn by the patient),
  - (e) the views of the mental health officer on the extension of the compulsion order, and
  - (f) any other information that the mental health officer considers relevant in relation to the extension of the compulsion order.
- (5) The matters referred to in subsection (2)(c) above are—
- (a) whether the mental health officer is sending a copy of the record to the patient, and
  - (b) if the mental health officer is not sending a copy of the record to the patient, the reason for not doing so.
- (6) For the purposes of subsection (2)(c) above, the persons are—
- (a) the patient’s named person,
  - (b) the patient’s responsible medical officer, and
  - (c) the Commission.”.

## **51 Notification of changes to compulsion order**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 157 (application for extension and variation of compulsion order: notification), paragraph (f) is repealed together with the word “and” immediately preceding it.
- (3) In section 160 (application for variation of compulsion order: notification), for the word “(f)” there is substituted “(e)”.

## **52 Effect of revocation of restriction order**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In subsection (2) of section 198 (effect of revocation of restriction order), for the words “Tribunal revoked the restriction order” there is substituted “order revoking the restriction order has effect in accordance with section 196 of this Act”.

## **53 Clarification of meaning of compulsion order**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) For the definition in subsection (1) of section 307 (interpretation) of “compulsion order” there is substituted—  
““compulsion order” means an order under section 57(2)(a) or 57A(2) of this Act;”.
- (3) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (4) In subsection (6)(d) of section 1 (principles for discharging certain functions), for the words “section 57A(2)” there is substituted “section 57(2)(a) or 57A(2)”.
- (5) For the definition in subsection (1) of section 329 (interpretation) of “compulsion order” there is substituted—

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““compulsion order” means an order under section 57(2)(a) or 57A(2) of the 1995 Act;”.