

*These notes relate to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) which received Royal Assent on 25 April 2003*

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***SCHEDULE 4 (Introduced by [section 331\(1\)](#)) – MINOR AND CONSEQUENTIAL AMENDMENTS***

##### **The Criminal Procedure (Scotland) Act 1995 (c.46)**

701. [Paragraph 8](#) provides for amendments made by the 2003 Act to the 1995 Act. All section numbers in paragraphs 691 to 719 of these Notes refer to the 1995 Act unless stated otherwise.
702. Sub-paragraph (2) amends section 54 to replace temporary hospital orders with temporary compulsion orders. It inserts subsection (2A) into section 54 which allows the court to make a temporary compulsion order under section 54(1)(c)(ii) if it is satisfied on the evidence of two medical practitioners-
- that the offender has a mental disorder;
  - that medical treatment is available which is likely to prevent the mental disorder worsening, or alleviate the symptoms or effects of the mental disorder; and
  - that if the offender were not provided with medical treatment there would be a significant risk to his or her health, safety, or welfare or to the safety of any other person.
703. A new subsection (2B) is inserted into section 54 which details the measures that may be authorised by a temporary compulsion order, namely-
- the removal if necessary of the offender to hospital within 7 days of the making of the order by a constable or by a person engaged to provide services in or to the specified hospital and who is authorised by the hospital managers to remove offenders for that purpose or by any specified person;
  - the detention of the offender in hospital; and
  - the giving of medical treatment to him or her in accordance with Part 16 of the 2003 Act.
704. Sub-paragraph (3) amends section 57 to allow for the making of interim compulsion orders, compulsion orders and compulsion orders combined with restriction orders in place of interim hospital orders and hospital orders. New subsection (3A) makes provision for section 57 equivalent to that made by section 53D(1), namely, that an offender cannot be made subject to consecutive interim compulsion orders (subject to the extension of the order under section 53B(4)).

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705. New subsection (4) applies, with modifications, the provisions of sections 57A to 57D to compulsion orders made under section 57(2)(a). New subsection (4A) provides that section 59 applies to restriction orders made under section 57(2)(b).
706. New subsection (4B) applies, with modifications, sections 53 to 53D to interim compulsion orders made under section 57(2)(bb). New subsection (4C) applies, with modifications, section 58 to guardianship orders made under section 57(2)(c).
707. Sub-paragraph (4) makes a minor consequential amendment to subsection (1A) of section 58 by taking out a reference to subsection (1) which has been repealed by the 2003 Act (see schedule 5). It also inserts the definition of mental disorder in terms of the 2003 Act and provides that the two medical practitioners whose evidence forms the basis for the making of a guardianship order must agree on at least one type of mental disorder that they each consider the person to be suffering from.
708. Sub-paragraph (5) amends section 59 to replace references to hospital orders with references to compulsion orders authorising detention. It also makes a number of changes in consequence of the repeal of the 1984 Act. Finally, it inserts new subsection (2A), which provides that the court can make a restriction order, if it has not previously made an interim compulsion order in respect of the offender, only where it is satisfied that the making of an interim compulsion order was not appropriate.
709. Sub-paragraph (6) replaces section 59A with new sections 59A to 59C. The overall effect of these new sections is to bring the making of hospital directions into line with the provisions for the making of compulsion orders.
710. Subsection (1) of section 59A provides that only offenders convicted on indictment in the High Court or the sheriff court of an offence punishable by imprisonment can be made subject to hospital directions.
711. Subsection (2) provides that the court may make a hospital direction only if it is satisfied, on the evidence of two medical practitioners, that the conditions in subsection (3) are met and as to the matters set out in subsection (4) and that the direction is appropriate after having regard to the matters in subsection (5). One of the medical practitioners must be an approved medical practitioner (see section 61 as amended by the 2003 Act).
712. The conditions in subsection (3) are-
- that the offender has a mental disorder (provided both medical practitioners agree on the type of disorder that the offender has: see subsection (8));
  - that medical treatment is available which is likely to prevent the mental disorder worsening or alleviate any of the symptoms or effects of the mental disorder ;
  - that, if the offender were not provided with that treatment, there would be a significant risk to his or her health, safety or welfare or to the safety of any other person; and
  - that the making of the hospital direction is necessary.
713. Subsection (4) provides for two further conditions that must be met before a hospital direction can be made-
- that the proposed hospital is suitable; and
  - that the offender could be admitted to it within 7 days of a direction being made.
714. The matters set out in subsection (5) to which the court must have regard are-
- the mental health officer's report under section 59B;

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- all the circumstances (including the nature of the offence of which the offender is convicted and the offender's past history); and
  - any alternative means of dealing with the offender.
715. Subsection (6) provides that the offender may be admitted to and detained in a state hospital only if both of the medical practitioners who gave evidence under subsection (2) satisfy the court that the offender needs to be detained under conditions of special security that can be provided only in a state hospital.
716. Subsection (7) sets out the measures that are authorised when a hospital direction is made, namely, removal of the offender to hospital within 7 days of the making of the order, their detention in hospital and the giving of medical treatment to them in accordance with the provisions of Part 16 of the 2003 Act.
717. Subsection (9) gives the court power to include in the hospital direction, directions for the removal of the offender to, and detention in, a place of safety pending admission to the specified hospital.
718. Where the court is considering making an offender subject to a hospital direction, section 59B allows the court to direct the mental health officer to interview the offender and prepare a report containing the information listed in subsection (4). The mental health officer need not interview the offender if it is impracticable do so.
719. Section 59C(1) provides that if it is not practicable by reason of emergency or special circumstances to admit the offender to the specified hospital within 7 days, the court or the Scottish Ministers may direct that the offender be admitted to another hospital. Subsection (2) provides for notification of the making of such a direction. Subsection (3) provides that, where a direction is made, the hospital specified by the Scottish Ministers shall replace the hospital specified by the court.
720. Sub-paragraph (7) amends section 60 to allow for appeals by offenders against the making of interim compulsion orders and compulsion orders.
721. Sub-paragraph (8) amends section 60A so that it now provides for appeals by the prosecutor against the making of compulsion orders, restriction orders, guardianship orders, decisions under section 57(2)(e) to make no order or hospital directions.
722. Sub-paragraph (9) amends section 60B to substitute compulsion orders for hospital orders so that the court may, instead of making a compulsion order or a guardianship order, make an intervention order.
723. Sub-paragraph (10) amends section 61 to reflect the use of the term "approved medical practitioner" in the 2003 Act (which replaces practitioners approved under section 20 of the 1984 Act) and to make references to new section numbers inserted into the 1995 Act.
724. Sub-paragraph (11) amends section 118 with the effect that subsections (3) to (6) of section 57 apply to an order made under section 118(5)(b)(i).
725. Sub-paragraph (12) amends section 190 with the effect that subsections (3) to (6) of section 57 apply to an order made under section 190(1)(b)(i).
726. Sub-paragraph (13) amends section 200 with the effect that one of the conditions that must be met before the court can make an order under section 200 a person for inquiry into mental condition is that the offender being made subject to the order can be admitted to a hospital that is suitable for their detention.
727. Sub-paragraph (14) replaces references in section 210 to orders made under sections 52, 53 and 200 with references to assessment orders, treatment orders and interim compulsion orders so that time spent in hospital by virtue of those orders shall be a factor in any sentence of imprisonment subsequently imposed on an offender.

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- 728. Sub-paragraph (15) amends section 230 to reflect the use of the term approved medical practitioner in this Act, and replaces the reference to a hospital order with references to a compulsory treatment order or a compulsion order.
- 729. Sub-paragraph (16) adds definitions of terms used in the new sections inserted by the 2003 Act into section 307, the interpretation section of the 1995 Act.