



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

## 2003 asp 13

### PART 8

#### MENTALLY DISORDERED PERSONS: CRIMINAL PROCEEDINGS

#### 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 [F157B 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

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- (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—

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- (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
    - (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.

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- (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.

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(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.

### **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—

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- (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**

- F1** 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**

- I1** S. 133 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, [Sch. 1](#)
- I2** [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)

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### *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,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.

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- (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**

- I3** S. 134 in force at 21.3.2005 for specified purposes by [S.S.I. 2005/161](#), art. 2, [Sch. 1](#)
- I4** [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)



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### *Probation with a requirement of treatment*

## **F<sup>2</sup>135 Amendment of 1995 Act: probation for treatment of mental disorder**

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#### **Textual Amendments**

**F2** S. 135 repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), sch. 2 para. 48(a); S.S.I. 2010/413, art. 2, sch. (with art. 3(1))

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