



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VI

#### MENTAL DISORDER

#### *[<sup>F1</sup>Assessment orders*

#### Textual Amendments

- F1** Ss. 52A-52U inserted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) (asp 13), [ss. 130, 333\(1\)-\(4\)](#); S.S.I. 2005/161, [art. 3](#) (as amended (27.9.2005) by S.S.I. 2005/465, [art. 2](#), [sch. 1](#) para. 32(13)(a)(i)(ii), [sch. 2](#))

#### **52B** Prosecutor's power to apply for assessment order

- (1) Where—
- (a) a person has been charged with an offence;
  - (b) a relevant disposal has not been made in the proceedings in respect of the offence; and
  - (c) it appears to the prosecutor that the person has a mental disorder,
- the prosecutor may apply to the court for an order under section 52D(2) of this Act (in this Act referred to as an “assessment order”) in respect of that person.
- (2) Where the prosecutor applies for an assessment order under subsection (1) above, the prosecutor shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.
- (3) Those persons are—
- (a) the person in respect of whom the application is made;
  - (b) any solicitor acting for the person; and
  - (c) in a case where the person is in custody, the Scottish Ministers.

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(4) In this section—

“court” means any court, other than a [F2JP court], competent to deal with the case; and

“relevant disposal” means—

- (a) the liberation in due course of law of the person charged;
- (b) the desertion of summary proceedings *pro loco et tempore* or *simpliciter*;
- (c) the desertion of solemn proceedings *simpliciter*;
- (d) the acquittal of the person charged; or
- (e) the conviction of the person charged.

#### Textual Amendments

**F2** Words in s. 52B(4) substituted (10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009 and 14.12.2009 for certain purposes, otherwise 22.2.2010) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 80, 84, [Sch. para. 26\(f\)](#); S.S.I. 2008/42, [art. 3](#), Sch.; S.S.I. 2008/192, [art. 3](#), Sch.; S.S.I. 2008/329, [art. 3](#), Sch.; S.S.I. 2008/362, [art. 3](#), Sch.; S.S.I. 2009/432, [art. 3](#), Schs. 1, 2

### 52C Scottish Ministers' power to apply for assessment order

(1) Where—

- (a) a person has been charged with an offence;
- (b) the person has not been sentenced;
- (c) the person is in custody; and
- (d) it appears to the Scottish Ministers that the person has a mental disorder,

the Scottish Ministers may apply to the court for an assessment order in respect of that person.

(2) Where the Scottish Ministers apply for an order under subsection (1) above, they shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.

(3) Those persons are—

- (a) the person in respect of whom the application is made;
- (b) any solicitor acting for the person; and
- (c) in a case where a relevant disposal has not been made in the proceedings in respect of the offence with which the person is charged, the prosecutor.

(4) In this section, “court” and “relevant disposal” have the same meanings as in section 52B of this Act.

### 52D Assessment order

(1) This section applies where an application for an assessment order is made under section 52B(1) or 52C(1) of this Act.

(2) If the court is satisfied—

- (a) on the written or oral evidence of a medical practitioner, as to the matters mentioned in subsection (3) below; 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 assessment order authorising the measures mentioned in subsection (6) below and specifying any matters to be included in the report under section 52G(1) of this Act.
- (3) The matters referred to in subsection (2)(a) above are—
- (a) that there are reasonable grounds for believing—
    - (i) that the person in respect of whom the application is made has a mental disorder;
    - (ii) that it is necessary to detain the person in hospital to assess whether the conditions mentioned in subsection (7) below are met in respect of the person; and
    - (iii) that if the assessment order were not made there would be a significant risk to the health, safety or welfare of the person or a significant risk to the safety of any other person;
  - (b) that the hospital proposed by the medical practitioner is suitable for the purpose of assessing whether the conditions mentioned in subsection (7) below are met in respect of the person;
  - (c) that, if an assessment order were made, the person could be admitted to such hospital before the expiry of the period of 7 days beginning with the day on which the order is made; and
  - (d) that it would not be reasonably practicable to carry out the assessment mentioned in paragraph (b) above unless an order were made.
- (4) The matters referred to in subsection (2)(b) above are—
- (a) all the circumstances (including the nature of the offence with which the person in respect of whom the application is made is charged or, as the case may be, of which the person was convicted); and
  - (b) any alternative means of dealing with the person.
- (5) The court may make an assessment order only if the person in respect of whom the application is made has not been sentenced.
- (6) The measures are—
- (a) in the case of a person who, when the assessment order is made, has not been admitted to the specified hospital, the removal, before the expiry of the period of 7 days beginning with the day on which the order is made, of the person 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, for the period of 28 days beginning with the day on which the order is made, of the person in the specified hospital; and
  - (c) during the period of 28 days beginning with the day on which the order is made, the giving to the person, in accordance with Part 16 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), of medical treatment.
- (7) The conditions referred to in paragraphs (a)(ii) and (b) of subsection (3) above are—

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- (a) that the person in respect of whom the application is made 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.
- (8) The court may make an assessment order in the absence of the person in respect of whom the application is made only if—
- (a) the person is represented by counsel or a solicitor;
  - (b) that counsel or solicitor is given an opportunity of being heard; and
  - (c) the court is satisfied that it is—
    - (i) impracticable; or
    - (ii) inappropriate,
 for the person to be brought before it.
- (9) An assessment order may include such directions as the court thinks fit for the removal of the person subject to the order to, and detention of the person in, a place of safety pending the person’s admission to the specified hospital.
- (10) The court shall, as soon as reasonably practicable after making an assessment order, give notice of the making of the order to—
- (a) the person subject to the order;
  - (b) any solicitor acting for the person;
  - (c) in a case where—
    - (i) the person has been charged with an offence; and
    - (ii) a relevant disposal has not been made in the proceedings in respect of the offence,
 the prosecutor;
  - (d) in a case where the person, immediately before the order was made, was in custody, the Scottish Ministers; and
  - (e) the Mental Welfare Commission.
- (11) In this section—
- “court” has the same meaning as in section 52B of this Act;
  - “medical treatment” has the meaning given by section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);
  - “relevant disposal” has the same meaning as in section 52B of this Act; and
  - “specified” means specified in the assessment order.

## **52E Assessment order made ex proprio motu: application of section 52D**

- (1) Where—
  - (a) a person has been charged with an offence;
  - (b) the person has not been sentenced; and

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- (c) it appears to the court that the person has a mental disorder, the court may, subject to subsections (2) and (3) below, make an assessment order in respect of that person.
- (2) The court may make an assessment order under subsection (1) above only if it would make one under subsections (2) to (11) of section 52D of this Act; and those subsections shall apply for the purposes of subsection (1) above as they apply for the purposes of subsection (1) of that section, references in those subsections to the person in respect of whom the application is made being construed as references to the person in respect of whom it is proposed to make an assessment order.
- (3) An assessment order made under subsection (1) above shall, for the purposes of this Act and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), be treated as if made under section 52D(2) of this Act.
- (4) In this section, “court” has the same meaning as in section 52B of this Act.

#### **52F Assessment order: supplementary**

- (1) If, before the expiry of the period of 7 days beginning with the day on which an assessment order is made—
- (a) in the case of a person who, immediately before the order was made, was in custody, it appears to the Scottish Ministers; or
- (b) in any other case, it appears to the court,
- that, by reason of emergency or other special circumstances, it is not reasonably practicable for the person to be admitted to the hospital specified in the order, the Scottish Ministers, or, as the case may be, the court, may direct that the person be admitted to the hospital specified in the direction.
- (2) Where the court makes a direction under subsection (1) above, it shall, as soon as reasonably practicable after making the direction, inform the person having custody of the person subject to the assessment order of the making of the direction.
- (3) Where the Scottish Ministers make a direction under subsection (1) above, they shall, as soon as reasonably practicable after making the direction, inform—
- (a) the court;
- (b) the person having custody of the person subject to the assessment order; and
- (c) in a case where—
- (i) the person has been charged with an offence; and
- (ii) a relevant disposal has not been made in the proceedings in respect of the offence,
- the prosecutor,
- of the making of the direction.
- (4) Where a direction is made under subsection (1) above, the assessment order shall have effect as if the hospital specified in the direction were the hospital specified in the order.
- (5) In this section—
- “court” means the court which made the assessment order; and
- “relevant disposal” has the same meaning as in section 52B of this Act.

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## **52G Review of assessment order**

- (1) The responsible medical officer shall, before the expiry of the period of 28 days beginning with the day on which the assessment order is made, submit a report in writing to the court—
  - (a) as to whether the conditions mentioned in section 52D(7) of this Act are met in respect of the person subject to the order; and
  - (b) as to any matters specified by the court under section 52D(2) of this Act.
- (2) The responsible medical officer shall, at the same time as such officer submits the report to the court, send a copy of such report—
  - (a) to the person in respect of whom the report is made;
  - (b) to any solicitor acting for the person;
  - (c) in a case where—
    - (i) the person has been charged with an offence; and
    - (ii) a relevant disposal has not been made in the proceedings in respect of the offence,
 to the prosecutor; and
  - (d) to the Scottish Ministers.
- (3) Subject to subsection (4) below, the court shall, on receiving a report submitted under subsection (1) above, revoke the assessment order and—
  - (a) subject to subsections (7) and (8) below, make a treatment order; or
  - (b) commit the person to prison or such other institution to which the person might have been committed had the assessment order not been made or otherwise deal with the person as the court considers appropriate.
- (4) If, on receiving a report submitted under subsection (1) above, the court is satisfied that further time is necessary to assess whether the conditions mentioned in section 52D(7) of this Act are met in respect of the person subject to the assessment order, it may, on one occasion only, make an order extending the assessment order for a period not exceeding 7 days beginning with the day on which the order otherwise would cease to authorise the detention of the person in hospital.
- (5) The court may, under subsection (4) above, extend an assessment order in the absence of the person subject to the order only if—
  - (a) the person is represented by counsel or a solicitor;
  - (b) that counsel or solicitor is given an opportunity of being heard; and
  - (c) the court is satisfied that it is—
    - (i) impracticable; or
    - (ii) inappropriate,
 for the person to be brought before it.
- (6) Where the court makes an order under subsection (4) above, it shall, as soon as reasonably practicable after making the order, give notice of the making of the order to—
  - (a) the persons mentioned in paragraphs (a) and (b) of subsection (2) above;
  - (b) in a case where—
    - (i) the person has been charged with an offence; and
    - (ii) a relevant disposal has not been made in the proceedings in respect of the offence,

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- the prosecutor;
  - (c) the Scottish Ministers; and
  - (d) the person's responsible medical officer.
- (7) The court shall make a treatment order under subsection (3)(a) above only if it would make one under subsections (2) to (10) of section 52M of this Act; and those subsections shall apply for the purposes of subsection (3)(a) above as they apply for the purposes of that section, references in those subsections to the person in respect of whom the application is made being construed as references to the person in respect of whom it is proposed to make a treatment order.
- (8) A treatment order made under subsection (3)(a) above shall, for the purposes of this Act and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), be treated as if made under section 52M(2) of this Act.
- (9) The responsible medical officer shall, where that officer is satisfied that there has been a change of circumstances since the assessment order was made which justifies the variation of the order, submit a report to the court in writing.
- (10) Where a report is submitted under subsection (9) above, the court shall—
- (a) if satisfied that the person need not be subject to an assessment order, revoke the order and take any action mentioned in subsection (3)(b) above; or
  - (b) if not so satisfied—
    - (i) confirm the order;
    - (ii) vary the order; or
    - (iii) revoke the order and take any action mentioned in subsection (3)(b) above.
- (11) Sections 52D, 52F, 52H and 52J of this Act and subsections (1) to (3) above apply to the variation of an order under subsection (10)(b)(ii) above as they apply to an assessment order.
- (12) In this section—
- “court” means the court which made the assessment order;
  - “relevant disposal” has the same meaning as in section 52B of this Act; and
  - “responsible medical officer” means the person's responsible medical officer appointed under section 230 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

## **52H Early termination of assessment order**

- (1) This section applies where—
- (a) in the case of a person who, when the assessment order is made, has not been removed to the hospital specified in the order, the period of 7 days beginning with the day on which the order is made has not expired;
  - (b) in the case of a person—
    - (i) who, when the assessment order is made, has been admitted to the hospital specified in the order; or
    - (ii) who has been removed under paragraph (a) of subsection (6) of section 52D of this Act to the hospital so specified,the period of 28 days beginning with the day on which the order is made has not expired; or

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- (c) in the case of a person in respect of whom the court has made an order under section 52G(4) of this Act extending the assessment order for a period, the period for which the order was extended has not expired.
- (2) An assessment order shall cease to have effect on the occurrence of any of the following events—
- (a) the making of a treatment order in respect of the person subject to the assessment order;
- (b) in a case where—
- (i) the person subject to the assessment order has been charged with an offence; and
- (ii) a relevant disposal had not been made in the proceedings in respect of that offence when the order was made, the making of a relevant disposal in such proceedings;
- (c) in a case where the person subject to the assessment order has been convicted of an offence but has not been sentenced—
- (i) the deferral of sentence by the court under section 202(1) of this Act;
- (ii) the making of one of the orders mentioned in subsection (3) below or
- (iii) the imposition of any sentence.
- (3) The orders are—
- (a) an interim compulsion order;
- (b) a compulsion order;
- (c) a guardianship order;
- (d) a hospital direction;
- (e) any order under section 57 of this Act; <sup>F3</sup> . . .
- (f) <sup>F4</sup> . . . . .

(4) In this section, “relevant disposal” has the same meaning as in section 52B of this Act.

#### Textual Amendments

**F3** Word in s. 52H(3) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), [Sch. 2 para. 2\(a\)](#); S.S.I. 2010/413, [art. 2](#), Sch. (with art. 3)

**F4** S. 52H(3)(f) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), [Sch. 2 para. 2\(b\)](#); S.S.I. 2010/413, [art. 2](#), Sch. (with art. 3)

## 52J Power of court on assessment order ceasing to have effect

- (1) Where, otherwise than by virtue of section 52G(3) or (10) or 52H(2) of this Act, an assessment order ceases to have effect the court shall commit the person who was subject to the order to prison or such other institution to which the person might have been committed had the order not been made or otherwise deal with the person as the court considers appropriate.
- (2) In this section, “court” has the same meaning as in section 52B of this Act.]



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