



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VI

MENTAL DISORDER

[^{F1}Assessment orders

[^{F1}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
 - (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;

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- (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 [F²end of the day following the] 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 [F³relevant period given by subsection (6A) below], of the person in the specified hospital; and
 - (c) during the [F³relevant period given by subsection (6A) below], 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.
- [For the purpose of subsection (6)(b) and (c) above, the relevant period is the period—
- F⁴(6A) (a) beginning with the day on which the order is made,
 (b) expiring at the end of the 28 days following that day.]
- (7) The conditions referred to in paragraphs (a)(ii) and (b) of subsection (3) above are—
- (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.

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- (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 [F5remanded] 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.]

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](#))
- F2** Words in s. 52D(6)(a) substituted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 40\(2\)\(a\)\(i\)](#), [61\(2\)](#); [S.S.I. 2017/197](#), [art. 2](#), [sch.](#)
- F3** Words in s. 52D(6)(b)(c) substituted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 40\(2\)\(a\)\(ii\)](#), [61\(2\)](#); [S.S.I. 2017/197](#), [art. 2](#), [sch.](#)
- F4** S. 52D(6A) inserted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 40\(2\)\(b\)](#), [61\(2\)](#); [S.S.I. 2017/197](#), [art. 2](#), [sch.](#)
- F5** Word in s. 52D(10)(d) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 38\(2\)\(c\)](#), [61\(2\)](#); [S.S.I. 2017/197](#), [art. 2](#), [sch.](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by 2010 asp 13 Sch. 7 para. 26
- s. 13(1B)(1C) inserted by 2006 asp 10 s. 82(2)
- s. 13(2)(aa) inserted by 2006 asp 10 s. 82(3)(b)
- s. 13(3A) inserted by 2006 asp 10 s. 82(4)
- s. 13(5)(ba) inserted by 2006 asp 10 s. 82(5)(a)
- s. 13(6)(a)(iii) and word inserted by 2006 asp 10 s. 82(6)(b)
- s. 13(8) inserted by 2006 asp 10 s. 82(7)
- s. 22(5A) inserted by 2007 asp 6 s. 7(2)(g)
- s. 22A(1A) inserted by 2023 asp 4 s. 1(2)
- s. 23B(1)(1A) substituted for s. 23B(1) by 2023 asp 4 s. 2(2)(a)
- s. 23B(6A) inserted by 2023 asp 4 s. 1(3)(c)
- s. 23B(8)-(10) inserted by 2023 asp 4 s. 2(2)(c)
- s. 23C(1A) inserted by 2023 asp 4 s. 2(3)(b)
- s. 23C(3) inserted by 2023 asp 4 s. 2(3)(c)
- s. 24(2C) inserted by 2023 asp 4 s. 4(4)
- s. 24(2AA) inserted by 2023 asp 4 s. 4(2)
- s. 44(5A)(5B) inserted by 2024 asp 5 s. 19(2)(c)
- s. 49(1)-(1F) substituted for s. 49(1)-(3) by 2024 asp 5 s. 17(2)(a)
- s. 49(4A)-(4C) inserted by 2024 asp 5 s. 17(2)(c)
- s. 50(7) inserted by 2024 asp 5 s. 16(2)
- s. 51(6)-(8) inserted by 2024 asp 5 s. 18(2)(e)
- s. 70B and cross-heading inserted by 2024 asp 5 s. 16(3)
- s. 73A inserted by 2004 asp 3 s. 2(3)
- s. 142A inserted by 2024 asp 5 s. 16(5)
- s. 167(7D)(7E) inserted by 2007 asp 17 sch. 4 para. 1(3)
- s. 167(7D) words substituted by 2010 asp 13 Sch. 3 para. 16(2)
- s. 167(7E) words substituted by 2010 asp 13 Sch. 3 para. 16(3)
- s. 175(1)(ca) words substituted by 2024 asp 5 Sch. para. 7(4)(a)
- s. 194ZA repealed by 2014 asp 18 sch. 3 para. 25
- s. 200A inserted by 2016 asp 1 s. 85
- s. 205A added by 1997 c. 48 s. 1(1) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)
- s. 208A inserted by 2024 asp 5 s. 19(6)
- s. 216(8)-(11) inserted by 2024 asp 5 s. 19(7)
- s. 249(4A)-(4D) inserted by 2014 asp 1 s. 24
- s. 271D(4A) inserted by 2019 asp 8 s. 6(4)
- s. 271F(2)(aa) inserted by 2019 asp 8 s. 10(4)
- s. 271AA inserted by 2019 asp 8 s. 6(2)
- s. 271BZD inserted by 2019 asp 8 s. 3(2)
- s. 288AB288AC inserted by 2024 asp 1 s. 32(3)
- s. 288BZA inserted by 2024 asp 5 s. 33(2)
- Sch. 5A added by 1997 c. 48 s. 1(2) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by 2003 asp 7, s. 19(3); S.S.I. 2003/288, art. 2, Sch.)