

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 1 – Protection of the Public at Large

Risk assessment and order for lifelong restriction; Disposal in case of insanity

Section 2 – Disposal of case where accused found to be insane

26. **Section 2** amends section 57 of the 1995 Act which provides the disposals for cases where the accused is found insane. This is where the accused is acquitted on grounds of insanity at the time of the act (or omission) constituting the offence (section 54(6)), the accused is acquitted following an examination of the facts (section 55(3)) or, following an examination of the facts, the court concludes that there are no grounds for acquitting the accused (section 55(2)). In these circumstances, the court can at present dispose of the case in the following ways:
- “(a) make an order (which shall have the same effect as a hospital order) that the person be detained in such hospital as the court may specify;
 - (b) in addition to making an order under paragraph (a) above make an order (which shall have the same effect as a restriction order) that the person shall, without limit of time be subject to the special restrictions set out in section 62(1) of the 1984 Act;
 - (c) make an order (which shall have the same effect as a guardianship order) placing the person under the guardianship of a local authority or of a person approved by a local authority;
 - (d) make a supervision and treatment order (within the meaning of paragraph 1(1) of Schedule 4 to [the 1995] Act, or
 - (e) make no order
27. **Section 2** amends these provisions to add to the list of disposals a power for the court to make an interim hospital order (IHO) under section 53 of the 1995 Act. An IHO may be imposed by the court after it is satisfied, on the evidence of two medical practitioners, that the offender is suffering from a mental disorder that requires the offender to be remanded to the State Hospital or other appropriate hospital. Section 53 also sets in place the procedure to be followed for the imposition, renewal and cessation of an IHO.
28. **Section 2** replaces section 57(3) of the 1995 Act to provide that where an assessment following an IHO finds that an offender poses a high risk to the public and meets the criteria for compulsory detention, the court must impose a hospital order with restrictions.
29. The replacement removes the existing provisions which had the effect of requiring the court to make a hospital order and a restriction order where section 57(1) applied and the charge was murder even although the offender might not have a mental disorder. The effect of removing this provision is that where the charge is murder the court will have all the disposals under 57(2) available to it.