



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VI

MENTAL DISORDER

Interim hospital orders

53 Interim hospital orders.

- (1) Where, in the case of a person to whom this section applies the court is satisfied on the written or oral evidence of two medical practitioners (complying with ^{F1} . . . section 61 of this Act)—
- (a) that the offender is suffering from mental disorder within the meaning of section 1(2) of the ^{M1}Mental Health (Scotland) Act 1984; and
 - (b) that there is reason to suppose—
 - (i) that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case; and
 - (ii) that, having regard to section 58(5) of this Act, the hospital to be specified in any such hospital order may be a State hospital,the court may, before making a hospital order or dealing with the offender in some other way [^{F2}, including imposing a sentence of imprisonment and making a hospital direction,], make an order (to be known as “an interim hospital order”) authorising his admission to and detention in a state hospital or such other hospital as for special reasons the court may specify in the order.
- ^{F3}(2)
- (3) An interim hospital order shall not be made in respect of an offender unless the court is satisfied that the hospital which is to be specified in the order, in the event of such an order being made by the court, is available for his admission thereto within [^{F4}7] days of the making of such an order.

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Changes to legislation: *Criminal Procedure (Scotland) Act 1995, Cross Heading: Interim hospital orders is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) Where a court makes an interim hospital order it shall not [^{F5}at that time] make any other order for detention or impose a fine or pass sentence of imprisonment or make a probation order or a community service order in respect of the offence, but may make any other order which it has power to make apart from this section.
- (5) The court by which an interim hospital order is made may include in the order such direction as it thinks fit for the conveyance of the offender to a place of safety and his detention therein pending his admission to the hospital within the period of [^{F6}7] days referred to in subsection (3) above.
- [^{F7}(5A) Subsections (1) and (4) of section 60 of the ^{M2}Mental Health (Scotland) Act 1984 shall apply to an interim hospital order as they apply to a hospital order.]
- (6) An interim hospital order—
- (a) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but
 - (b) may be renewed for further periods of not more than 28 days at a time if it appears to the court on the written or oral evidence of the responsible medical officer that the continuation of the order is warranted,
- but no such order shall continue in force for more than [^{F8}twelve months] in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides, after considering the written or oral evidence of the responsible medical officer, to deal with the offender in some other way [^{F9}, including imposing a sentence of imprisonment and making a hospital direction].
- (7) An interim hospital order may be renewed under subsection (6) above without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.
- (8) If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court which made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.
- (9) When an interim hospital order ceases to have effect in relation to an offender the court may deal with him in any way (other than by making a new interim hospital order) in which it could have dealt with him if no such order had been made.
- (10) The power conferred on the court by this section is without prejudice to the power of the court under section 200(1) of this Act to remand a person in order that an inquiry may be made into his physical or mental condition.
- (11) This section applies to any person—
- (a) convicted in the High Court or the sheriff court of an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law);
 - (b) charged on complaint in the sheriff court if the sheriff is satisfied that he did the act or made the omission charged but does not convict him; or
 - (c) remitted to the sheriff court from the district court under section 58(10) of this Act if the sheriff is satisfied as mentioned in paragraph (b) above.
- (12) In this section “the court” means—
- (a) the High Court, as regards a person—

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- (i) convicted on indictment in that court; or
 - (ii) convicted on indictment in the sheriff court and remitted for sentence to the High Court; and
- (b) the sheriff court, as regards a person—
- (i) convicted in the sheriff court and not remitted as mentioned in paragraph (a)(ii) above; or
 - (ii) referred to in paragraph (b) or (c) of subsection (11) above.

Textual Amendments

- F1** Words in s. 53(1) repealed (1.1.1998) by 1997 c. 48, ss. 10(1)(a), 62(2), **Sch. 3**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F2** Words in s. 53(1) inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(5)(a)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F3** S. 53(2) repealed (1.1.1998) by 1997 c. 48, ss. 10(1)(b), 62(2), Sch. 3; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F4** Word in s. 53(3) substituted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(5)(b)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F5** Words in s. 53(4) inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(5)(c)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F6** Word in s. 53(5) substituted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(5)(d)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F7** S. 53(5A) inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(5)(e)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F8** Words in s. 53(6) substituted (1.1.1998) by 1997 c. 48, s. 11; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F9** Words in s. 53(6) inserted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(5)(f)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

Marginal Citations

- M1** 1984 c.36.
- M2** 1984 c.36.

VALID FROM 05/10/2005

^{F10}53A Interim compulsion order: supplementary

- (1) If, before the expiry of the period of 7 days beginning with the day on which the interim compulsion order 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, as soon as reasonably practicable after making the direction, inform the person having custody of the offender; and
 - (b) the Scottish Ministers make such a direction, they shall, as soon as reasonably practicable after making the direction, inform—

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- (i) the court; and
- (ii) the person having custody of the offender.

(3) Where a direction is made under subsection (1) above, the interim 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 interim compulsion order.]

Textual Amendments

F10 Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. **131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, art. 33(14))

VALID FROM 05/10/2005

[^{F11}53B Review and extension of interim compulsion order

- (1) The responsible medical officer shall, before the expiry of the period specified by the court under section 53(8)(b) of this Act, submit a report in writing to the court—
 - (a) as to the matters mentioned in subsection (2) below; and
 - (b) as to any matters specified by the court under section 53(2) of this Act.
- (2) The matters are—
 - (a) whether the conditions mentioned in section 53(5) of this Act are met in respect of the offender;
 - (b) the type (or types) of mental disorder that the offender has; and
 - (c) whether it is necessary to extend the interim compulsion order to allow further time for the assessment mentioned in section 53(3)(b) of this Act.
- (3) The responsible medical officer shall, at the same time as such officer submits the report to the court, send a copy of such report to—
 - (a) the offender; and
 - (b) any solicitor acting for the offender.
- (4) The court may, on receiving the report submitted under subsection (1) above, if satisfied that the extension of the order is necessary, extend the order for such period (not exceeding 12 weeks beginning with the day on which the order would cease to have effect were such an extension not made) as the court may specify.
- (5) The court may extend an interim compulsion order under subsection (4) above for a period only if, by doing so, the total period for which the offender will be subject to the order does not exceed 12 months beginning with the day on which the order was first made.
- (6) The court may, under subsection (4) above, extend an interim compulsion order in the absence of the offender only if—
 - (a) the offender is represented by counsel or a solicitor;
 - (b) that counsel or solicitor is given an opportunity of being heard; and

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- (c) the court is satisfied that it is—
(i) impracticable; or
(ii) inappropriate,
for the offender to be brought before it.

(7) Subsections (1) to (9) of this section shall apply for the purposes of an interim compulsion order extended under subsection (4) above as they apply for the purposes of an interim compulsion order, references in those subsections to the period specified by the court under section 53(8)(b) of this Act being construed as references to the period specified by the court under subsection (4) above.

(8) Where a report is submitted under subsection (1) above, the court may, before the expiry of the period specified by the court under section 53(8)(b) of this Act—

- (a) revoke the interim compulsion order and make one of the disposals mentioned in section 53(6) of this Act; or
(b) revoke the interim compulsion order and deal with the offender in any way (other than by making an interim compulsion order) in which the court could have dealt with the offender if no such order had been made.

(9) In this section—

“court” means the court which made the interim compulsion order; and
“responsible medical officer” 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).]

Textual Amendments

F11 Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, art. 33(14))

VALID FROM 05/10/2005

[^{F12}53C Early termination of interim compulsion order

(1) An interim compulsion order shall cease to have effect if the court—

- (a) makes a compulsion order in relation to the offender;
(b) makes a hospital direction in relation to the offender; or
(c) deals with the offender in some other way, including the imposing of a sentence of imprisonment on the offender.

(2) In this section, “court” means the court which made the interim compulsion order.]

Textual Amendments

F12 Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, art. 33(14))

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[^{F13}53D Power of court on interim compulsion order ceasing to have effect

- (1) Where, otherwise than by virtue of section 53B(8) or 53C of this Act, an interim compulsion order ceases to have effect the court may deal with the offender who was subject to the order in any way (other than the making of a new interim compulsion order) in which it could have dealt with the offender if no such order had been made.
- (2) In this section, “court” means the court which made the interim compulsion order.]

Textual Amendments

- F13** Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, art. 33(14))

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