



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VI

#### MENTAL DISORDER

#### *[<sup>F1</sup>Treatment 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](#))

#### **52K Prosecutor's power to apply for treatment 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 52M of this Act (in this Act referred to as a “treatment order”) in respect of that person.
- (2) Where the prosecutor applies for a treatment 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 [<sup>F2</sup>remanded] in custody, the Scottish Ministers.

*Status: Point in time view as at 30/09/2017.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Treatment orders is up to date with all changes known to be in force on or before 12 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) In this section, “court” and “relevant disposal” have the same meanings as in section 52B of this Act.

#### Textual Amendments

- F2** Word in s. 52K(3)(c) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. **38(2)(e)**, 61(2); S.S.I. 2017/197, art. 2, sch.

### 52L Scottish Ministers' power to apply for treatment order

- (1) Where—
- (a) a person has been charged with an offence;
  - (b) the person has not been sentenced;
  - (c) the person is [<sup>F3</sup>remanded] 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 a treatment 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.

#### Textual Amendments

- F3** Word in s. 52L(1)(c) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. **38(2)(f)**, 61(2); S.S.I. 2017/197, art. 2, sch.

### 52M Treatment order

- (1) This section applies where an application for a treatment order is made under section 52K(1) or 52L(1) of this Act.
- (2) If the court is satisfied—
- (a) on the written or oral evidence of two medical practitioners, 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 a treatment order authorising the measures mentioned in subsection (6) below.
- (3) The matters referred to in subsection (2)(a) above are—

*Status: Point in time view as at 30/09/2017.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Treatment orders is up to date with all changes known to be in force on or before 12 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)*

- (a) that the conditions mentioned in subsection (7) of section 52D of this Act are met in relation to the person in respect of whom the application is made;
  - (b) that the hospital proposed by the approved medical practitioner and the medical practitioner is suitable for the purpose of giving medical treatment to the person; and
  - (c) that, if a treatment order were made, such person could be admitted to such hospital before the [<sup>F4</sup>end of the day following the] 7 days beginning with the day on which the order is 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 a treatment 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 treatment order is made, has not been admitted to the specified hospital, the removal, before the [<sup>F5</sup>end 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 of the person in the specified hospital; and
  - (c) 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 court may make a treatment 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 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.
- (8) A treatment 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.
- (9) The court shall, as soon as reasonably practicable after making a treatment 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

*Status: Point in time view as at 30/09/2017.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Treatment orders is up to date with all changes known to be in force on or before 12 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)*

- (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—
- (i) was [<sup>F6</sup>remanded] in custody ; or
  - (ii) was subject to an assessment order and, immediately before that order was made, was [<sup>F6</sup>remanded] in custody,
- the Scottish Ministers; and
- (e) the Mental Welfare Commission.
- (10) In this section—
- “court” has the same meaning as in section 52B of this Act;
- “medical treatment” has the same meaning as in section 52D of this Act; and
- “specified” means specified in the treatment order.

#### Textual Amendments

- F4** Words in s. 52M(3)(c) substituted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 41(2)(a)**, 61(2); S.S.I. 2017/197, art. 2, sch.
- F5** Words in s. 52M(6)(a) substituted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 41(2)(b)**, 61(2); S.S.I. 2017/197, art. 2, sch.
- F6** Word in s. 52M(9)(d)(i)(ii) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 38(2)(g)**, 61(2); S.S.I. 2017/197, art. 2, sch.

### 52N Treatment order made ex proprio motu: application of section 52M

- (1) Where—
- (a) a person has been charged with an offence;
  - (b) the person has not been sentenced; and
  - (c) it appears to the court that the person has a mental disorder,
- the court may, subject to subsections (2) and (3) below, make a treatment order in respect of that person.
- (2) The court may make a treatment order under subsection (1) 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 (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 a treatment order.
- (3) A treatment 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 52M(2) of this Act.
- (4) In this section, “court” has the same meaning as in section 52B of this Act.

### 52P Treatment order: supplementary

- (1) If, before the [<sup>F7</sup>end of the day following the] 7 days beginning with the day on which the treatment order is made—

*Status: Point in time view as at 30/09/2017.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Treatment orders is up to date with all changes known to be in force on or before 12 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)*

- (a) in the case of a person to whom subsection (2) below applies, 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) This subsection applies to—
- (a) a person who is [<sup>F8</sup>remanded] in custody immediately before the treatment order is made; or
  - (b) a person—
    - (i) who was subject to an assessment order immediately before the treatment order is made; and
    - (ii) who was [<sup>F9</sup>remanded] in custody immediately before that assessment order was made.
- (3) 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 treatment order of the making of the direction.
- (4) 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 treatment 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.
- (5) Where a direction is made under subsection (1) above, the treatment order shall have effect as if the hospital specified in the direction were the hospital specified in the order.
- (6) In this section—
- “court” means the court which made the treatment order; and
  - “relevant disposal” has the same meaning as in section 52B of this Act.

#### Textual Amendments

- F7** Words in s. 52P(1) substituted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 41\(3\), 61\(2\); S.S.I. 2017/197, art. 2, sch.](#) (with [art. 20\(a\)](#))
- F8** Word in s. 52P(2)(a) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 38\(2\)\(h\), 61\(2\); S.S.I. 2017/197, art. 2, sch.](#)
- F9** Word in s. 52P(2)(b)(ii) inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 38\(2\)\(h\), 61\(2\); S.S.I. 2017/197, art. 2, sch.](#)

*Status: Point in time view as at 30/09/2017.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Treatment orders is up to date with all changes known to be in force on or before 12 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)*

## **52Q Review of treatment order**

- (1) The responsible medical officer shall, where that officer is satisfied—
  - (a) that any of the conditions mentioned in section 52D(7) of this Act are no longer met in respect of the person subject to the treatment order; or
  - (b) that there has otherwise been a change of circumstances since the order was made which makes the continued detention of the person in hospital by virtue of the order no longer appropriate,
 submit a report in writing to the court.
- (2) Where a report is submitted under subsection (1) above, the court shall—
  - (a) if satisfied that the person need not be subject to the treatment order—
    - (i) revoke the order; and
    - (ii) commit the person 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; 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 paragraph (a)(ii) above.
- (3) Sections 52M, 52P, this section and sections 52R and 52S of this Act apply to the variation of a treatment order under subsection (2)(b)(ii) above as they apply to a treatment order.
- (4) In this section—
 

“court” means the court which made the treatment order; 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).

## **52R Termination of treatment order**

- (1) This section applies—
  - (a) where, in the case of a person who, when the treatment order is made, has not been removed to the hospital specified in the order, the [<sup>F10</sup>relevant period given by subsection (1A) below] has not expired; or
  - (b) in the case of a person—
    - (i) who, when the treatment 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 52M of this Act to the hospital so specified.

[ For the purpose of subsection (1)(a) above, the relevant period is the period—

<sup>F11</sup>(1A) (a) beginning with the day on which the order is made,

(b) expiring at the end of the 7 days following that day.]

- (2) A treatment order shall cease to have effect on the occurrence of any of the following events—
  - (a) in a case where—

*Status: Point in time view as at 30/09/2017.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Treatment orders is up to date with all changes known to be in force on or before 12 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)*

- (i) the person subject to the treatment order has been charged with an offence; and
- (ii) a relevant disposal had not been made in the proceedings in respect of such offence when the order was made,  
the making of a relevant disposal in such proceedings;
- (b) in a case where the person subject to the treatment 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>F12</sup> . . .
  - (f) <sup>F13</sup> . . . . .
- (4) In this section, “relevant disposal” has the same meaning as in section 52B of this Act.

**Textual Amendments**

- F10** Words in s. 52R(1)(a) substituted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. **41(4)(a)**, 61(2); S.S.I. 2017/197, art. 2, sch. (with art. 20(b))
- F11** S. 52R(1A) inserted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. **41(4)(b)**, 61(2); S.S.I. 2017/197, art. 2, sch. (with art. 20(b))
- F12** Word in s. 52R(3) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), **Sch. 2 para. 3(a)**; S.S.I. 2010/413, art. 2, Sch. (with art. 3)
- F13** S. 52R(3)(f) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), **Sch. 2 para. 3(b)**; S.S.I. 2010/413, art. 2, Sch. (with art. 3)

**52S Power of court on treatment order ceasing to have effect**

- (1) Where, otherwise than by virtue of section 52Q(2) or 52R(2) of this Act, a treatment 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.]

**Status:**

Point in time view as at 30/09/2017.

**Changes to legislation:**

Criminal Procedure (Scotland) Act 1995, Cross Heading: Treatment orders is up to date with all changes known to be in force on or before 12 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.