



# Crime and Punishment (Scotland) Act 1997

## 1997 CHAPTER 48

### PART I

#### SENTENCING

##### *Mentally disordered offenders*

#### **6 Disposal in cases of mentally disordered offenders.**

- (1) After section 59 of the 1995 Act (restriction orders), there shall be inserted the following section—

**“59A Hospital directions.**

- (1) Subject to subsection (2) and (3) below, where a person is convicted on indictment in the High Court or in the sheriff court of an offence punishable by imprisonment, the court may, in addition to any sentence of imprisonment which it has the power or the duty to impose, by a direction under this subsection (in this Act referred to as a “hospital direction”) authorise his admission to and detention in such hospital as may be specified in the direction.
- (2) Subsection (1) above shall not apply where the person convicted is a child.
- (3) A hospital direction shall not be made unless—
- the court is satisfied on the written or oral evidence of two medical practitioners (complying with section 61 of this Act) that the grounds set out in section 17(1) of the <sup>M1</sup>Mental Health (Scotland) Act 1984 apply in relation to the offender;
  - the medical practitioners mentioned in paragraph (a) above each describe the person as suffering from the same form of mental

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- disorder, being mental illness or mental handicap, whether or not he is also described by either of them as suffering from the other form; and
- (c) the court is satisfied that the hospital to be specified in the direction can admit the person in respect of whom it is to be made within 7 days of the direction being made.
- (4) A State hospital shall not be specified in a hospital direction in respect of the detention of a person unless the court is satisfied, on the evidence of the medical practitioners which is taken into account under paragraphs (a) and (b) of subsection (3) above, that the person—
- (a) on account of his dangerous violent or criminal propensities requires treatment under conditions of special security; and
- (b) cannot suitably be cared for in a hospital other than a State hospital.
- (5) A hospital direction shall specify the form of mental disorder from which, upon the evidence taken into account under paragraphs (a) and (b) of subsection (3) above, the person in respect of whom it is made is found to be suffering.
- (6) The court by which a hospital direction is made may give such additional directions as it thinks fit for the conveyance of the person in respect of whom it is made to a place of safety and for his detention in that place pending his admission to hospital within the period mentioned in paragraph (c) of subsection (3) above.
- (7) The court shall not make an additional direction under subsection (6) above directing the conveyance of the person concerned to a place of safety which is a residential establishment unless it is satisfied that the managers of that establishment are willing to receive him in the establishment.”.
- (2) In section 60 of the 1995 Act (appeals against disposal related to mental disorder)—
- (a) for the words “or a restriction order” there shall be substituted the words “ , a restriction order or a hospital direction ”; and
- (b) for the words “order in” there shall be substituted the words “ order or, as the case may be, direction in ”.
- (3) In section 204 of the 1995 Act (restrictions on the passing of sentence of imprisonment)—
- (a) in subsection (2), the words from “and”, where it first occurs, to the end shall cease to have effect; and
- (b) after subsection (2), there shall be inserted the following subsection—
- “(2A) For the purpose of determining under subsection (2) above whether any other method of dealing with such a person is appropriate, the court shall take into account—
- (a) such information as it has been able to obtain from an officer of a local authority or otherwise about his circumstances;
- (b) any information before it concerning his character and mental and physical condition;
- (c) its power to make a hospital direction in addition to imposing a sentence of imprisonment.”.
- (4) In section 207 of the 1995 Act (detention of young offenders), after subsection (4) there shall be inserted the following subsection—

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“(4A) In forming an opinion under subsection (3) above the court shall take into account its power to make a hospital direction in addition to imposing a period of detention.”.

(5) In section 307 of the 1995 Act (interpretation), after the definition of “hospital” there shall be inserted the following definition—

““hospital direction” has the meaning assigned to it by section 59A(1) of this Act;”.

#### Marginal Citations

M1 [1984 c.36.](#)

### **F17 Effect of hospital direction.**

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#### Textual Amendments

F1 [S. 7](#) repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. [333\(2\)](#), [Sch. 5 Pt. 1](#); [S.S.I. 2005/161](#), art. 3 (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

### **F28 Remand of persons suffering from mental disorder to private hospital.**

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#### Textual Amendments

F2 [S. 8](#) repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. [333\(2\)](#), [Sch. 5 Pt. 1](#); [S.S.I. 2005/161](#), art. 3 (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

### **9 Power to specify hospital unit.**

(1) Subject to subsection (2) below, any power to specify a hospital which is conferred by—

- (a) section 57(2)(a) of the 1995 Act (disposal where accused [<sup>F3</sup>found not criminally responsible or unfit for trial]);
- (b) section 58 of the 1995 Act (hospital orders);
- (c) section 59A of the 1995 Act (hospital directions); or
- (d) section 71 of the 1984 Act (transfer direction),

includes a power to specify a hospital unit; and where such a unit is specified in relation to any person in the exercise of such a power, any reference in any enactment (including one contained in this Act) to him being, or being liable to be, detained in a hospital shall be construed accordingly.

(2) In subsection (1) above—

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- (a) paragraph (a) shall not apply unless the court also makes an order under paragraph (b) of section 57(2) of the 1995 Act;
- (b) paragraph (b) shall not apply unless the court also makes an order under section 59 of the 1995 Act;
- (c) paragraph (d) shall not apply unless the Secretary of State also gives a direction under section 72 of the 1984 Act.

(3) In this section—

“hospital”, in relation to the exercise of a power, has the same meaning as in the enactment which confers the power;

“hospital unit” means any part of a hospital which is treated as a separate unit.

#### Textual Amendments

- F3** Words in s. 9(1)(a) substituted (25.6.2012 with application in accordance with art. 3 of the commencing S.S.I.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), s. 206\(1\), Sch. 7 para. 66](#); S.S.I. 2012/160, art. 3, Sch.

## 10 Medical evidence in relation to mentally disordered offenders.

(1) In section 53 of the 1995 Act (interim hospital orders)—

- (a) in subsection (1), the words “subsection (2) below and” shall cease to have effect; and
- (b) subsection (2) shall cease to have effect.

(2) In section 61 of the 1995 Act (requirements as to medical evidence)—

- (a) in subsection (1), for the words from “under” to “this Act” there shall be substituted the words “ in making a finding under section 54(1)(a) of this Act or under any of the relevant provisions ”;
- (b) after subsection (1) there shall be inserted the following subsection—

“(1A) Of the medical practitioners whose evidence is taken into account under section 53(1), 54(1)(c), 58(1)(a)(i) or 59A(3)(a) and (b) of this Act, at least one shall be employed at the hospital which is to be specified in the order or, as the case may be, direction.”;

- (c) in subsection (2), for the words “the said section 58(1)(a)” there shall be substituted the words “ any of the relevant provisions ”;
- (d) in subsection (3), for the words “the said sections 54(1) and 58(1)(a)” there shall be substituted the words “ making a finding under section 54(1)(a) of this Act or of any of the relevant provisions ”; and
- (e) after subsection (5) there shall be added the following subsection—

“(6) In this section the “relevant provisions” means sections 53(1), 54(1)(c), 58(1)(a) and 59A(3)(a) and (b) of this Act.”.

## 11 Increase in maximum period of interim hospital orders.

In section 53 of the 1995 Act (interim hospital orders), in subsection (6), for the words “six months” there shall be substituted the words “ twelve months ”.

## **12 Sentence calculation where remand spent in hospital.**

In section 210 of the 1995 Act (consideration of time spent in custody), in subsection (1)—

- (a) at the end of paragraph (a) there shall be inserted the words “ , or spent in hospital awaiting trial or sentence by virtue of an order made under section 52, 53 or 200 of this Act ”; and
- (b) in paragraph (c), after subparagraph (ii) there shall be inserted the following words—

“; or

- (iii) has spent a period of time in hospital awaiting trial or sentence by virtue of an order made under section 52, 53 or 200 of this Act.”.

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