SCOTTISH STATUTORY INSTRUMENTS

2005 No. 457

HIGH COURT OF JUSTICIARY

SHERIFF COURT

Act of Adjournal (Criminal Procedure Rules Amendment No. 4) (Mental Health (Care and Treatment) (Scotland) Act 2003) 2005

Made - - - -	*16th September 2005*
Coming into force - -	*5th October 2005*

The Lord Justice General, the Lord Justice Clerk and Lords Commissioners of Justiciary, under and by virtue of the powers conferred on them by section 305 of the Criminal Procedure (Scotland) Act 1995(**a**), and of all other powers enabling them in that behalf, with the consent of the Scottish Ministers, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules Amendment No. 4) (Mental Health (Care and Treatment) (Scotland) Act 2003) 2005 and shall come into force on 5th October 2005.

(2) This Act of Adjournal shall be inserted in the Books of Adjournal.

Amendment of the Act of Adjournal (Criminal Procedure Rules) 1996

2.—(1) The Act of Adjournal (Criminal Procedure Rules) 1996(**b**) shall be amended in accordance with the following sub-paragraphs.

(2) For Chapter 7 (mental disorder) there shall be substituted the following:–

"**CHAPTER 7**

MENTAL DISORDER

Application for assessment orders

7.1.—(1) A written application under—

(a) section 52B(1) of the Act of 1995 (assessment order: prosecutor)(**c**); or

(b) section 52C(1) of the Act of 1995 (assessment order: Scottish Ministers),

shall be in Form 7.1.

(**a**) 1995 c.46.
(**b**) S.I. 1996/513, last amended by S.S.I 2005/188.
(**c**) Sections 52A to 52U were inserted by section 130 of the Mental Health (Care and Treatment) (Scotland) Act 2003 asp 13.

(2) Where an application is made under paragraph (1)—

(a) the court shall appoint a diet for hearing the application; and

(b) the clerk of court shall intimate the diet to the applicant, the person in respect of whom the application is made or the solicitor for that person, the governor of any institution in which the person in respect of whom the application is made is detained and, where the application is by the Scottish Ministers, the prosecutor.

Assessment orders *ex proprio motu*

7.2. Where the court considers making an assessment order under section 52E of the Act of 1995 (assessment order: *ex proprio motu*) and considers it appropriate to do so—

(a) the court shall appoint a diet for parties to be heard; and

(b) the clerk of court shall intimate the diet to the prosecutor, the person in respect of whom the order may be made or the solicitor for that person, and the governor of any institution in which the person in respect of whom the application is made is detained.

Applications for treatment orders

7.3.—(1) A written application under—

(a) section 52K(1) of the Act of 1995 (treatment order: prosecutor); or

(b) section 52L(1) of the Act of 1995 (treatment order: Scottish Ministers),

shall be in Form 7.3.

(2) Where an application is made under paragraph (1)—

(a) the court shall appoint a diet for hearing the application; and

(b) the clerk of court shall intimate the diet to the applicant, the person in respect of whom the application is made or the solicitor for that person, the governor of any institution in which the person in respect of whom the application is made is detained, and where the application is by the Scottish Ministers, the prosecutor.

Treatment orders *ex proprio motu*

7.4. Where the court considers making a treatment order under section 52N of the Act of 1995 (treatment order: *ex proprio motu*) and considers it appropriate to do so—

(a) the court shall appoint a diet for parties to be heard; and

(b) the clerk of court shall intimate the diet to the prosecutor, the person in respect of whom the order may be made or the solicitor for that person, and the governor of any institution in which the person in respect of whom the application is made is detained.

Variation of assessment orders or review of treatment orders

7.5. Where the court receives a report under section 52G(9) (report for variation of assessment order) or section 52Q(1) (report for review of treatment order) of the Act of 1995—

(a) the court shall, by interlocutor in Form 7.5, appoint a hearing for parties to be heard and where appropriate, grant warrant to authorised officers of the hospital or officers of law, to bring the offender from the hospital to the court for that diet; and

(b) the clerk of court shall intimate the diet to the prosecutor, the person in respect of whom the order has been made or the solicitor for that person.

Interim compulsion order

7.6.—(1) Subject to paragraph (2), where the court receives a report under section 53B(1) of the Act of 1995 (interim compulsion order)(**a**) —

(a) the court shall—

(i) by interlocutor in Form 7.6, appoint a hearing for parties to be heard and where appropriate, grant warrant to authorised officers of the hospital or officers of law, to bring the offender from the hospital to the court for that diet;

(ii) discharge the diet already fixed; and

(b) the clerk of court shall intimate the diet to the prosecutor, the person in respect of whom the order has been made or the solicitor for that person.

(2) Where the report referred to in paragraph (1) is received within 14 days before the diet already fixed, paragraph (1) shall not apply.

Assessment, treatment and interim compulsion orders: specified hospital

7.7. Where the court makes a direction under section 52F(1)(b) (assessment order: specified hospital), section 52P(1)(b) (treatment order: specified hospital) or section 53A(1) (interim compulsion order: specified hospital)(**b**) of the Act of 1995 the court shall send a copy of the direction to the person in respect of whom the order has been made, the solicitor for that person, the prosecutor and Scottish Ministers.

Compulsion orders and hospital directions: specified hospital

7.8. Where the court makes a direction under 57D(1) (compulsion order: specified hospital)(**c**) or specifies another hospital in a direction under section 59C(1) (hospital direction: specified hospital)(**d**) of the Act of 1995 the court shall send a copy of the direction or specification, as the case may be, to the person in respect of whom the order has been made and the solicitor for that person.”.

(3) In the appendix, for Forms 7.1-A and 7.1-B there shall be substituted the forms set out in the Schedule to this Act of Adjournal.

Cullen of Whitekirk
Lord Justice General

Edinburgh
16th September 2005

I.P.D.

(**a**) Section 53B was inserted by section 131 of the Mental Health (Care and Treatment) (Scotland) Act 2003 asp 13.
(**b**) Section 53A was inserted by section 131 of the Mental Health (Care and Treatment) (Scotland) Act 2003 asp 13.
(**c**) Section 57D was inserted by section 133 of the Mental Health (Care and Treatment) (Scotland) Act 2003 asp 13.
(**d**) Section 59C was inserted by paragraph 8(6) of Schedule 4 to the Mental Health (Care and Treatment) (Scotland) Act 2003 asp 13.

SCHEDULE

Paragraph 2(3)

FORM 7.1

Rule 7.1(1)

Form of written application for assessment order under sections 52B(1) and 52C(1) of the Criminal Procedure (Scotland) Act 1995

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

under section 52B(1) [or 52C(1)] of the Criminal Procedure (Scotland) Act 1995

by

Her Majesty's Advocate

[*or* [A.B.] Procurator Fiscal] [*or* Scottish Ministers]

in respect of

[C.D.] (*address*) [*or* Prisoner in the Prison of (*place*)]

for

Assessment order

Prosecution reference ……

Court reference……...

HUMBLY SHEWETH:

1. That [C.D.] has been indicted at the instance of Her Majesty's Advocate [*or* has been charged in the above court on a petition [*or* summary complaint] at the instance of the procurator fiscal] with a preliminary hearing [*or* trial diet] in the High Court of Justiciary sitting at (*place*) on (*date*) [*or* with a first diet on (*date)*] and [*or* with a trial diet on (*date*)] [in the sheriff court of (*place*)][*or* and has been convicted of (*state crime or offence*)].

[2. That [C.D.] is presently in custody at (*place*).]

3. That it appears [C.D.] has a mental disorder and that it is appropriate that an assessment order be made in respect of [C.D.] [, and a copy medical report is attached to this application.]

MAY IT THEREFORE, please your Lordship[s]—

[(a)] to fix a diet for the purpose of considering this application for an assessment order; [*or* and

(b) to make an assessment order authorising the measures under section 52D(6) of the Criminal Procedure (Scotland) Act 1995].

ACCORDING TO JUSTICE, etc.

(*Signed*)

For Her Majesty's Advocate

[*or* Procurator Fiscal (Depute)]

[*or* For Scottish Ministers].

FORM 7.3

Rule 7.3(1)

Form of written application for treatment order under sections 52K(1) and 52L(1) of the Criminal Procedure (Scotland) Act 1995

UNTO THE RIGHT HONOURABLE THE LORD JUSTICE GENERAL, LORD JUSTICE CLERK AND LORDS COMMISSIONERS OF JUSTICIARY

[*or* UNTO THE HONOURABLE THE SHERIFF OF (*name of sheriffdom*) AT (*place*)]

APPLICATION

under section 52K(1) [*or* 52L(1)] of the Criminal Procedure (Scotland) Act 1995

by

Her Majesty's Advocate

[*or* [A.B.] Procurator Fiscal] [*or* Scottish Ministers]

in respect of

[C.D.] (*address*) [*or* Prisoner in the Prison of (*place*)]

for

Treatment order

Prosecution reference ……

Court reference……...

HUMBLY SHEWETH:

1. That [C.D.] has been indicted at the instance of Her Majesty's Advocate [*or* has been charged in the above court on a petition [*or* summary complaint] at the instance of the procurator fiscal] [with a preliminary hearing [*or* trial diet] in the High Court of Justiciary sitting at (*place*) on (*date*)] [*or* with a first diet on (*date)*] and [*or* with a trial diet on (*date*)] [in the sheriff court of (*place*)][*or* and has been convicted of (*state crime or offence*)].

[2. That [C.D.] is presently in custody at (*place*).]

3. That it appears [C.D.] has a mental disorder and that it is appropriate that a treatment order be made in respect of [C.D.], [and a copy medical report is [*or* copy medical reports are] attached to this application].

MAY IT THEREFORE, please your Lordship[s]—

[(a)] to fix a diet for the purpose of considering this application for a treatment order; [*or* and

(b) to make a treatment order authorising the measures under section 52M(6) of the Criminal Procedure (Scotland) Act 1995].

ACCORDING TO JUSTICE, etc.

(*Signed*)

For Her Majesty's Advocate

[*or* Procurator Fiscal (Depute)]

[*or* For Scottish Ministers].

FORM 7.5

Rule 7.5

Form of order for diet of hearing and warrant to bring accused to court for hearing on variation of assessment order under section 52G(9) or review of treatment order under section 52Q of the Criminal Procedure (Scotland) Act 1995

(*Place and date*) The Lord Commissioner of Justiciary [*or* The Sheriff] appoints (*date*) at (*time*) within (*place*) as a diet for a hearing on a report for the variation of an assessment order [*or* report for review of a treatment order]; grants warrant to authorised officers of hospital [*or* officers of law] to bring (*name of accused*) before the court for that diet.

(*Signed*)

Clerk of Justiciary

[*or* Sheriff].

FORM 7.6

Rule 7.6(1)

Form of order for diet and warrant to bring offender to court for hearing on interim compulsion order

(*Place and date*) The Lord Commissioner of Justiciary [*or* The Sheriff] appoints (*date*) at (*time*) within (*place*) as a diet for a hearing on a report on an interim compulsion order; grants warrant to authorised officers of hospital [*or* officers of law] to bring (*name of offender*) before the court for that diet.

(*Signed*)

Clerk of Justiciary

[*or* Sheriff]

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal)

This Act of Adjournal amends the Criminal Procedure Rules 1996 (S.I. 1996/513) ("the 1996 Rules") to make provision consequential upon amendments to the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) ("the 2003 Act").

Paragraph 2(2) inserts new rules to set out procedure for a written application to the court for assessment orders or treatment orders under the 1995 Act. There are also provided rules of procedure for the court to make such orders *ex proprio motu*. A new rule is provided for procedure to allow the variation of an assessment order or review of a treatment order. New rule 7.6 sets out a procedure to allow an early diet to be fixed in certain circumstances where an interim compulsion order has been made by the court. Finally, rules provide for intimation on certain parties where the court changes the hospital specified in an assessment, treatment, interim compulsion, or compulsion order or hospital direction.

Paragraph 2(3) inserts forms into the appendix for a written application for an assessment or treatment order, and forms of interlocutor where a hearing has been fixed that include a warrant to bring the accused person or offender to court.

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