



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VI

MENTAL DISORDER

Appeals under Part VI

62 Appeal by accused [^{F1}not criminally responsible or unfit for trial] .

- (1) A person may appeal to the [^{F2}appropriate Appeal Court] against—
- (a) a finding made under section 54(1) of this Act that he is [^{F3}unfit for trial] so that his trial cannot proceed or continue, or the refusal of the court to make such a finding;
 - (b) a finding under section 55(2) of this Act; or
 - (c) an order made under section 57(2) of this Act.
- (2) An appeal under subsection (1) above shall be—
- (a) in writing; and
 - (b) lodged—
 - (i) in the case of an appeal under paragraph (a) of that subsection, not later than seven days after the date of the finding or refusal which is the subject of the appeal;
 - (ii) in the case of an appeal under paragraph (b), or both paragraphs (b) and (c) of that subsection, not later than 28 days after the conclusion of the examination of facts;
 - (iii) in the case of an appeal under paragraph (c) of that subsection against an order made on an acquittal, by [^{F4}reason of the special defence set out in section 51A of this Act] , not later than 14 days after the date of the acquittal;
 - (iv) in the case of an appeal under that paragraph against an order made on a finding under section 55(2), not later than 14 days after the conclusion of the examination of facts,

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or within such longer period as the [^{F5}appropriate Appeal Court] may, on cause shown, allow.

- (3) Where the examination of facts was held in connection with proceedings on indictment, subsections (1)(a) and (2)(b)(i) above are without prejudice to section 74(1) of this Act.
- (4) Where an appeal is taken under subsection (1) above, the period from the date on which the appeal was lodged until it is withdrawn or disposed of shall not count towards any time limit applying in respect of the case.
- (5) An appellant in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the [^{F6}appropriate Appeal Court] determines that his presence is not practicable or appropriate.
- (6) In disposing of an appeal under subsection (1) above the [^{F7}appropriate Appeal Court] may—
 - (a) affirm the decision of the court of first instance;
 - (b) make any other finding or order which that court could have made at the time when it made the finding [^{F8}, order or other disposal] which is the subject of the appeal; or
 - (c) remit the case to that court with such directions in the matter as the [^{F7}appropriate Appeal Court] thinks fit.
- (7) Section 60 of this Act shall not apply in relation to any order as respects which a person has a right of appeal under subsection (1)(c) above.
- [^{F9}(8) In this section, “appropriate Appeal Court” means—
 - (a) in the case of an appeal under subsection (1) against a finding or refusal, or an order made, in proceedings on indictment, the High Court;
 - (b) in the case of an appeal under subsection (1) against a finding or refusal, or an order made, in summary proceedings, the Sheriff Appeal Court.]

Textual Amendments

- F1** Words in s. 62 heading substituted (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. 42**; S.S.I. 2012/160, art. 3, sch.
- F2** Words in s. 62(1) substituted (22.9.2015) by *The Courts Reform (Scotland) Act 2014* (Consequential Provisions No. 2) Order 2015 (S.S.I. 2015/338), art. 1, **sch. 2 para. 5(2)(a)** (with art. 4)
- F3** Words in s. 62(1)(a) substituted (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. 42(a)**; S.S.I. 2012/160, art. 3, sch.
- F4** Words in s. 62(2)(b)(iii) substituted (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. 42(b)**; S.S.I. 2012/160, art. 3, sch.
- F5** Words in s. 62(2) substituted (22.9.2015) by *The Courts Reform (Scotland) Act 2014* (Consequential Provisions No. 2) Order 2015 (S.S.I. 2015/338), art. 1, **sch. 2 para. 5(2)(a)** (with art. 4)
- F6** Words in s. 62(5) substituted (22.9.2015) by *The Courts Reform (Scotland) Act 2014* (Consequential Provisions No. 2) Order 2015 (S.S.I. 2015/338), art. 1, **sch. 2 para. 5(2)(a)** (with art. 4)
- F7** Words in s. 62(6) substituted (22.9.2015) by *The Courts Reform (Scotland) Act 2014* (Consequential Provisions No. 2) Order 2015 (S.S.I. 2015/338), art. 1, **sch. 2 para. 5(2)(a)** (with art. 4)

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- F8** Words in s. 62(6)(b) substituted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(7)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F9** S. 62(8) inserted (22.9.2015) by The Courts Reform (Scotland) Act 2014 (Consequential Provisions No. 2) Order 2015 (S.S.I. 2015/338), art. 1, **sch. 2 para. 5(2)(b)** (with art. 4)

63 Appeal by prosecutor [F10 where accused found not criminally responsible or unfit for trial].

- (1) The prosecutor may appeal to the [F11 appropriate Appeal Court] on a point of law against—
- (a) a finding under subsection (1) of section 54 of this Act that an accused is [F12 unfit for trial] so that his trial cannot proceed or continue;
 - [F13](b) an acquittal by reason of the special defence set out in section 51A of this Act;
 - (c) an acquittal under section 55(3) of this Act (whether or not [F14 by reason of the special defence set out in section 51A of this Act]); or
 - [F15](d)
- (2) An appeal under subsection (1) above shall be—
- (a) in writing; and
 - (b) lodged—
 - (i) in the case of an appeal under paragraph (a) or (b) of that subsection, not later than seven days after the finding or, as the case may be, the acquittal which is the subject of the appeal;
 - (ii) in the case of an appeal under paragraph (c) [F16 . . . of that subsection, not later than seven days after the conclusion of the examination of facts,or within such longer period as the [F17 appropriate Appeal Court] may, on cause shown, allow.
- (3) Where the examination of facts was held in connection with proceedings on indictment, subsections (1)(a) and (2)(b)(i) above are without prejudice to section 74(1) of this Act.
- (4) A respondent in an appeal under this subsection shall be entitled to be present at the hearing of the appeal unless the [F18 appropriate Appeal Court] determines that his presence is not practicable or appropriate.
- (5) In disposing of an appeal under subsection (1) above the [F19 appropriate Appeal Court] may—
- (a) affirm the decision of the court of first instance;
 - (b) make any other finding [F20 order or disposal] which that court could have made at the time when it made the finding [F20 or acquittal] which is the subject of the appeal; or
 - (c) remit the case to that court with such directions in the matter as the [F19 appropriate Appeal Court] thinks fit.
- (6) In this section, “the prosecutor” means, in relation to proceedings on indictment, the Lord Advocate.
- [F21(7) In this section, “appropriate Appeal Court” means—
- (a) in the case of an appeal under subsection (1) against a finding or an acquittal made in proceedings on indictment, the High Court;

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- (b) in the case of an appeal under subsection (1) against a finding or an acquittal made in summary proceedings, the Sheriff Appeal Court.]

Textual Amendments

- F10** Words in s. 63 heading substituted (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. 43**; S.S.I. 2012/160, art. 3, sch.
- F11** Words in s. 63(1) substituted (22.9.2015) by **The Courts Reform (Scotland) Act 2014 (Consequential Provisions No. 2) Order 2015** (S.S.I. 2015/338), art. 1, **sch. 2 para. 5(3)(a)** (with art. 4)
- F12** Words in s. 63(1)(a) substituted (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. 43(a)**; S.S.I. 2012/160, art. 3, sch.
- F13** S. 63(1)(b) substituted (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. 43(b)**; S.S.I. 2012/160, art. 3, sch.
- F14** Words in s. 63(1)(c) substituted (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. 43(c)**; S.S.I. 2012/160, art. 3, sch.
- F15** S. 63(1)(d) repealed (1.1.1998) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(8)(a), **Sch. 3**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F16** Words in s. 63(2)(b)(ii) repealed (1.1.1998) by 1997 c. 48, s. 62(1)(2), Sch. 1 para. 21(8)(b), **Sch. 3**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F17** Words in s. 63(2) substituted (22.9.2015) by **The Courts Reform (Scotland) Act 2014 (Consequential Provisions No. 2) Order 2015** (S.S.I. 2015/338), art. 1, **sch. 2 para. 5(3)(a)** (with art. 4)
- F18** Words in s. 63(4) substituted (22.9.2015) by **The Courts Reform (Scotland) Act 2014 (Consequential Provisions No. 2) Order 2015** (S.S.I. 2015/338), art. 1, **sch. 2 para. 5(3)(a)** (with art. 4)
- F19** Words in s. 63(5) substituted (22.9.2015) by **The Courts Reform (Scotland) Act 2014 (Consequential Provisions No. 2) Order 2015** (S.S.I. 2015/338), art. 1, **sch. 2 para. 5(3)(a)** (with art. 4)
- F20** Words in s. 63(5)(b) substituted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(8)(c)(i)(ii)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F21** S. 63(7) inserted (22.9.2015) by **The Courts Reform (Scotland) Act 2014 (Consequential Provisions No. 2) Order 2015** (S.S.I. 2015/338), art. 1, **sch. 2 para. 5(3)(b)** (with art. 4)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to [legislation.gov.uk](#). 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to [legislation.gov.uk](#). 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)