



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 High Court against—
 - (a) a finding made under section 54(1) of this Act that he is [^{F2}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 [^{F3}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 High 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an appeal is taken under subsection (1) above, the period from the date on which the appeal was lodged until it is withdrawn or disposed of shall not count towards any time limit applying in respect of the case.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 High Court determines that his presence is not practicable or appropriate.
- (6) In disposing of an appeal under subsection (1) above the High 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 ^[F4], 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 High 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.

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)(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.

F3 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.

F4 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)

63 Appeal by prosecutor ^[F5]where accused found not criminally responsible or unfit for trial .

- (1) The prosecutor may appeal to the High Court on a point of law against—
 - (a) a finding under subsection (1) of section 54 of this Act that an accused is ^[F6]unfit for trial] so that his trial cannot proceed or continue;
 - ^[F7](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 ^[F8]by reason of the special defence set out in section 51A of this Act]); or
 - ^{F9}(d)
- (2) An appeal under subsection (1) above shall be—
 - (a) in writing; and

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- (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) ^{F10} . . . of that subsection, not later than seven days after the conclusion of the examination of facts,
or within such longer period as the High 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 High Court determines that his presence is not practicable or appropriate.
- (5) In disposing of an appeal under subsection (1) above the High Court may—
- (a) affirm the decision of the court of first instance;
 - (b) make any other finding [^{F11}order or disposal] which that court could have made at the time when it made the finding [^{F11}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 High Court thinks fit.
- (6) In this section, “the prosecutor” means, in relation to proceedings on indictment, the Lord Advocate.

Textual Amendments

- F5** 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.
- F6** 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.
- F7** 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.
- F8** 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.
- F9** 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)
- F10** 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)
- F11** 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)

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