



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VI

#### MENTAL DISORDER

##### *Hospital orders and guardianship*

#### **58 Order for hospital admission or guardianship.**

- (1) Where a person is convicted in the High Court or the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment, and the following conditions are satisfied, that is to say—
  - (a) 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—
    - (i) section 17(1); or, as the case may be
    - (ii) section 36(a),of the Mental Health (Scotland) Act 1984 apply in relation to the offender;
  - (b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section,subject to subsection (2) below, the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of such local authority or of such other person approved by a local authority as may be so specified.
- (2) Where the case is remitted by the sheriff to the High Court for sentence under any enactment, the power to make an order under subsection (1) above shall be exercisable by that court.
- (3) Where in the case of a person charged summarily in the sheriff court with an act or omission constituting an offence the court would have power, on convicting him, to

*Status: Point in time view as at 01/01/1998. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Hospital orders and guardianship 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)*

make an order under subsection (1) above, then, if it is satisfied that the person did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

- (4) An order for the admission of a person to a hospital (in this Act, referred to as “a hospital order”) shall not be made under this section in respect of an offender or of a person to whom subsection (3) above applies unless the court is satisfied that that hospital, in the event of such an order being made by the court, is available for his admission thereto within [<sup>F1</sup>7] days of the making of such an order.
- (5) A State hospital shall not be specified in a hospital order 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 paragraph (a) of subsection (1) above, that the offender, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.
- (6) An order placing a person under the guardianship of a local authority or of any other person (in this Act referred to as “a guardianship order”) shall not be made under this section unless the court is satisfied—
  - (a) after taking into consideration the evidence of a mental health officer, that it is necessary in the interests of the welfare of the person that he should be placed under guardianship; and
  - (b) that that authority or person is willing to receive that person into guardianship.
- (7) A hospital order or guardianship order shall specify the form of mental disorder, being mental illness or mental handicap or both, from which, upon the evidence taken into account under paragraph (a) of subsection (1) above, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners, whose evidence is taken into account as aforesaid, as suffering from the same form of mental disorder, whether or not he is also described by either of them as suffering from the other form.
- (8) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or make a probation order or a community service order in respect of the offence, but may make any other order which the court has power to make apart from this section; and for the purposes of this subsection “sentence of imprisonment” includes any sentence or order for detention.
- (9) The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending his admission to the hospital within the period of [<sup>F2</sup>7] days referred to in subsection (4) above; but a direction for the conveyance of a patient to a residential establishment shall not be given unless the court is satisfied that the authority is willing to receive the patient therein.
- (10) Where a person is charged before the district court with an act or omission constituting an offence punishable with imprisonment, the district court, if it appears to it that that person may be suffering from mental disorder, shall remit him to the sheriff court in the manner provided by section 7(9) and (10) of this Act, and the sheriff court shall, on any such remit being made, have the like power to make an order under subsection (1) above in respect of him as if he had been charged before that court with the said act or omission as an offence, or in dealing with him may exercise the like powers as the district court.

*Status: Point in time view as at 01/01/1998. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Hospital orders and guardianship 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)*

#### Textual Amendments

- F1** Word in s. 58(4) substituted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(6)(a)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F2** Word in s. 58(9) substituted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(6)(b)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

#### Modifications etc. (not altering text)

- C1** S. 58 extended (1.1.1998) by 1997 c. 48, s. 9(1)(b) (subject to s. 9(2)); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

VALID FROM 01/04/2002

### [<sup>F3</sup>58A Application of Adults with Incapacity (Scotland) Act 2000

- (1) Subject to the provisions of this section, the provisions of Parts 1, 5, 6 and 7 of the Adults with Incapacity (Scotland) Act 2000 (asp 4) (“the 2000 Act”) apply—
- (a) to a guardian appointed by an order of the court under section 57(2)(c), 58(1) or 58(1A) of this Act (in this section referred to as a “guardianship order”) whether appointed before or after the coming into force of these provisions, as they apply to a guardian with powers relating to the personal welfare of an adult appointed under section 58 of that Act;
  - (b) to a person authorised under an intervention order under section [<sup>F4</sup>60B] of this Act as they apply to a person so authorised under section 53 of that Act.
- (2) In making a guardianship order the court shall have regard to any regulations made by the Scottish Ministers under section 64(11) of the 2000 Act and—
- (a) shall confer powers, which it shall specify in the order, relating only to the personal welfare of the person;
  - (b) may appoint a joint guardian;
  - (c) may appoint a substitute guardian;
  - (d) may make such consequential or ancillary order, provision or direction as it considers appropriate.
- (3) Without prejudice to the generality of subsection (2), or to any other powers conferred by this Act, the court may—
- (a) make any order granted by it subject to such conditions and restrictions as appear to it to be appropriate;
  - (b) order that any reports relating to the person who will be the subject of the order be lodged with the court or that the person be assessed or interviewed and that a report of such assessment or interview be lodged;
  - (c) make such further inquiry or call for such further information as appears to it to be appropriate;
  - (d) make such interim order as appears to it to be appropriate pending the disposal of the proceedings.
- (4) Where the court makes a guardianship order it shall forthwith send a copy of the interlocutor containing the order to the Public Guardian who shall—

*Status: Point in time view as at 01/01/1998. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Hospital orders and guardianship 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) enter prescribed particulars of the appointment in the register maintained by him under section 6(2)(b)(iv) of the 2000 Act;
  - (b) unless he considers that the notification would be likely to pose a serious risk to the person's health notify the person of the appointment of the guardian; and
  - (c) notify the local authority and the Mental Welfare Commission of the terms of the interlocutor.
- (5) A guardianship order shall continue in force for a period of 3 years or such other period (including an indefinite period) as, on cause shown, the court may determine.
- (6) Where any proceedings for the appointment of a guardian under section 57(2)(c) or 58(1) of this Act have been commenced and not determined before the date of coming into force of section 84 of, and paragraph 26 of schedule 5 to, the Adults with Incapacity (Scotland) Act 2000 (asp 4) they shall be determined in accordance with this Act as it was immediately in force before that date.]

#### Textual Amendments

- F3** S. 58A inserted (1.4.2002) by 2000 asp 4, s. 84(2); S.S.I. 2001/81, art. 3, Sch. 2
- F4** S. 58A: "In section 84 (applications to guardians appointed under [Criminal Procedure \(Scotland\) Act 1995 \(c. 46\)](#), in subsection (1)(b) of the section prospectively inserted by subsection (2), for the words "60A" there is substituted "60B"" (1.4.2002) by virtue of 2001 asp 8, s. 79, Sch. 3 para. 23(5); S.S.I. 2002/162, art. 2(h) (subject to arts. 3-13)

## 59 Hospital orders: restrictions on discharge.

- (1) Where a hospital order is made in respect of a person, and it appears to the court—
- (a) having regard to the nature of the offence with which he is charged;
  - (b) the antecedents of the person; and
  - (c) the risk that as a result of his mental disorder he would commit offences if set at large,
- that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section, further order that the person shall be subject to the special restrictions set out in section 62(1) of the <sup>M1</sup>Mental Health (Scotland) Act 1984, without limit of time.
- (2) An order under this section (in this Act referred to as “a restriction order”) shall not be made in the case of any person unless the medical practitioner approved by the Health Board for the purposes of section 20 or section 39 of the Mental Health (Scotland) Act 1984, whose evidence is taken into account by the court under section 58(1)(a) of this Act, has given evidence orally before the court.
- (3) Where a restriction order is in force in respect of a patient, a guardianship order shall not be made in respect of him; and where the hospital order relating to him ceases to have effect by virtue of section 60(3) of the Mental Health (Scotland) Act 1984 on the making of another hospital order, that order shall have the same effect in relation to the restriction order as the previous hospital order, but without prejudice to the power of the court making that other hospital order to make another restriction order to have effect on the expiration of the previous such order.

*Status: Point in time view as at 01/01/1998. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Hospital orders and guardianship 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)*

#### Marginal Citations

M1 1984 c.36.

### [<sup>F5</sup>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—
  - (a) 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>M2</sup>Mental Health (Scotland) Act 1984 apply in relation to the offender;
  - (b) the medical practitioners mentioned in paragraph (a) above each describe the person as suffering from the same form of mental 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.]

*Status: Point in time view as at 01/01/1998. This version of this cross heading contains provisions that are not valid for this point in time.*

**Changes to legislation:** Criminal Procedure (Scotland) Act 1995, Cross Heading: Hospital orders and guardianship 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)

#### Textual Amendments

**F5** S. 59A inserted (1.1.1998) by 1997 c. 48, s. 6(1); S.I. 1997/2323, art. 4, Sch. 2 (subject to art. 7)

#### Modifications etc. (not altering text)

**C2** S. 59A extended (1.1.1998) by 1997 c. 48, s. 9(1)(c) (subject to s. 9(2)); S.I. 1997/2323, art. 4, Sch. 2 (subject to art. 7)

#### Marginal Citations

**M2** 1984 c.36.

## 60 Appeals against hospital orders.

Where a hospital order, interim hospital order (but not a renewal thereof), guardianship order [<sup>F6</sup>, a restriction order or a hospital direction] has been made by a court in respect of a person charged or brought before it, he may without prejudice to any other form of appeal under any rule of law (or, where an interim hospital order has been made, to any right of appeal against any other order or sentence which may be imposed), appeal against that [<sup>F6</sup>order or, as the case may be, direction in] the same manner as against sentence.

#### Textual Amendments

**F6** Words in s. 60 substituted (1.1.1998) by 1997 c. 48, s. 6(2)(a)(b); S.I. 1997/2323, art. 4, Sch. 2 (subject to art. 7)

### [<sup>F7</sup>60A Appeal by prosecutor against hospital orders etc.

- (1) This section applies where the court, in respect of a person charged or brought before it, has made—
  - (a) an order under any of paragraphs (a) to (d) of subsection (2) of section 57 of this Act or such a decision as is mentioned in paragraph (e) of that subsection; or
  - (b) a hospital order, guardianship order, restriction order or a hospital direction.
- (2) Where this section applies, the prosecutor may appeal against any such order, decision or direction as is mentioned in subsection (1) above—
  - (a) if it appears to him that the order, decision or direction was inappropriate; or
  - (b) on a point of law,
 and an appeal under this section shall be treated in the same manner as an appeal against sentence under section 108 of this Act.]

#### Textual Amendments

**F7** S. 60A inserted (1.1.1998) by 1997 c. 48, s. 22; S.I. 1997/2323, art. 4, Sch. 2 (subject to art. 7)

*Status: Point in time view as at 01/01/1998. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Hospital orders and guardianship 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)*

VALID FROM 01/04/2002

### **60B Intervention orders**

The court may instead of making a hospital order under section 58(1) of this Act or a guardianship order under section 57(2)(c) or 58(1A) of this Act, make an intervention order (as defined in section 53(1) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) where it considers that it would be appropriate to do so.

VALID FROM 21/03/2005

### **60C Acquitted persons: detention for medical examination**

- (1) Subject to subsection (7) below, this section applies where a person charged with an offence is acquitted.
- (2) If the court by or before which the person is acquitted is satisfied—
  - (a) on the written or oral evidence of two medical practitioners that the conditions mentioned in subsection (3) below are met in respect of the person; and
  - (b) that it is not practicable to secure the immediate examination of the person by a medical practitioner,the court may, immediately after the person is acquitted, make an order authorising the measures mentioned in subsection (4) below for the purpose of enabling arrangements to be made for a medical practitioner to carry out a medical examination of the person.
- (3) The conditions referred to in subsection (2)(a) above are—
  - (a) that the person has a mental disorder;
  - (b) that medical treatment which would be likely to—
    - (i) prevent the mental disorder worsening; or
    - (ii) alleviate any of the symptoms, or effects, of the disorder,is available for the person; and
  - (c) that if the person were not provided with such medical treatment there would be a significant risk—
    - (i) to the health, safety or welfare of the person; or
    - (ii) to the safety of any other person.
- (4) The measures referred to in subsection (2) above are—
  - (a) the removal of the person to a place of safety by—
    - (i) a constable; or
    - (ii) a person specified by the court; and
  - (b) the detention, subject to subsection (6) below, of the person in that place of safety for a period of 6 hours beginning with the time at which the order under subsection (2) above is made.
- (5) If the person absconds—
  - (a) while being removed to a place of safety under subsection (4) above; or

*Status: Point in time view as at 01/01/1998. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Criminal Procedure (Scotland) Act 1995, Cross Heading: Hospital orders and guardianship 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)*

- (b) from the place of safety,  
a constable or the person specified by the court under paragraph (a) of that subsection may, at any time during the period mentioned in paragraph (b) of that subsection, take the person into custody and remove the person to a place of safety.
- (6) An order under this section ceases to authorise detention of a person if, following the medical examination of the person, a medical practitioner grants—
- (a) an emergency detention certificate under section 36 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13); or
  - (b) a short-term detention certificate under section 44 of that Act.
- (7) This section does not apply—
- (a) in a case where a declaration is made by virtue of section 54(6) of this Act that the person is acquitted on account of the person's insanity at the time of doing the act or making the omission constituting the offence with which the person was charged; or
  - (b) in a case where the court states under section 55(4) of this Act that the person is so acquitted on the ground of such insanity.
- (8) In this section, “medical treatment” has the same meaning as in section 52D of this Act.

VALID FROM 21/03/2005

#### **60D Notification of detention under section 60C**

- (1) This section applies where a person has been removed to a place of safety under section 60C of this Act.
- (2) The court shall, before the expiry of the period of 14 days beginning with the day on which the order under section 60C(2) of this Act is made, ensure that the Mental Welfare Commission is given notice of the matters mentioned in subsection (3) below.
- (3) Those matters are—
  - (a) the name and address of the person removed to the place of safety;
  - (b) the date on and time at which the person was so removed;
  - (c) the address of the place of safety;
  - (d) if the person is removed to a police station, the reason why the person was removed there; and
  - (e) any other matter that the Scottish Ministers may, by regulations made by statutory instrument, prescribe.
- (4) The power conferred by subsection (3)(e) above may be exercised so as to make different provision for different cases or descriptions of case or for different purposes.
- (5) A statutory instrument containing regulations under subsection (3)(e) above shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.



**Status:**

Point in time view as at 01/01/1998. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:**

Criminal Procedure (Scotland) Act 1995, Cross Heading: Hospital orders and guardianship 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.