



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VI

MENTAL DISORDER

F1 ...

Textual Amendments

- F1** S. 54 cross-heading omitted (with application in accordance with art. 3 of the commencing S.S.I.) by virtue of [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\), ss. 170\(2\), 206\(1\); S.S.I. 2012/160, art. 3, sch.](#)

54 **[^{F2}Unfitness for trial: further provision].**

- (1) Where the court is satisfied ^{F3}... that a person charged with the commission of an offence is [^{F4}unfit for trial] so that his trial cannot proceed or, if it has commenced, cannot continue, the court shall, subject to subsection (2) below—
- (a) make a finding to that effect and state the reasons for that finding;
 - (b) discharge the trial diet [^{F5}or, in proceedings on indictment where the finding is made at or before the first diet (in the case of proceedings in the sheriff court) or the preliminary hearing (in the case of proceedings in the High Court), that diet or, as the case may be, hearing] and order that a diet (in this Act referred to as an “an examination of facts”) be held under section 55 of this Act; and
 - (c) remand the person in custody or on bail or, where the court is satisfied—
 - (i) on the written or oral evidence of two medical practitioners, that [^{F6}the conditions mentioned in subsection (2A) below are met in respect of the person]; and
 - (ii) that a hospital is available for his admission and suitable for his detention,

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make an order (in this section referred to as a [^{F7}temporary compulsion order]) [^{F8}authorising the measures mentioned in subsection (2B) below in respect of the person] until the conclusion of the examination of facts.

(2) Subsection (1) above is without prejudice to the power of the court, on an application by the prosecutor, to desert the diet *pro loco et tempore*.

[^{F9}(2A) The conditions referred to in subsection (1)(c)(i) 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—
 - (a) to the health, safety or welfare of the person; or
 - (b) to the safety of any other person.

(2B) The measures referred to in subsection (1)(c) above are—

- (a) in the case of a person who, when the temporary compulsion order is made, has not been admitted to the specified hospital, the removal, before the expiry of the period of 7 days beginning with the day on which the order is made of the person to the specified hospital by—
 - (i) a constable;
 - (ii) a person employed in, or contracted to provide services in or to, the specified hospital who is authorised by the managers of that hospital to remove persons to hospital for the purposes of this section; or
 - (iii) a specified person;
- (b) the detention of the person in the specified hospital; and
- (c) the giving to the person, in accordance with Part 16 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13), of medical treatment.]

(3) The court may, before making a finding under subsection (1) above as to [^{F10}whether a person is unfit for trial], adjourn the case in order that investigation of his mental [^{F11}or physical] condition may be carried out.

(4) The court which made a temporary [^{F12}compulsion] order may, at any time while the order is in force, review the order on the ground that there has been a change of circumstances since the order was made and, on such review—

- (a) where the court considers that such an order is no longer required in relation to a person, it shall revoke the order and may remand him in custody or on bail;
- (b) in any other case, the court may—
 - (i) confirm or vary the order; or
 - (ii) revoke the order and make such other order, under subsection (1) (c) above or any other provision of this Act, as the court considers appropriate.

(5) Where it appears to a court that it is not practicable or appropriate for the accused to be brought before it for the purpose of determining whether he is [^{F13}unfit for trial] so that his trial cannot proceed, then, if no objection to such a course is taken by or on behalf of the accused, the court may order that the case be proceeded with in his absence.

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^{F14}(6)

^{F14}(7)

(8) In this section

[^{F15}“medical treatment” has the same meaning as in section 52D of this Act; “specified” means specified in the temporary compulsion order; and],
“the court” means—

- (a) as regards a person charged on indictment, the High Court or the sheriff court;
- (b) as regards a person charged summarily, the sheriff court.

Textual Amendments

- F2** S. 54 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), **ss. 170(2)**, 206(1); S.S.I. 2012/160, art. 3, sch.
- F3** Words in s. 54(1) repealed (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 170(2)(a)(i)**, 206(1); S.S.I. 2012/160, art. 3, sch.
- F4** Words in s. 54(1) substituted (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 170(2)(a)(ii)**, 206(1); S.S.I. 2012/160, art. 3, sch.
- F5** Words in s. 54(1)(b) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 25, 27(1)**, **Sch. para. 13**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F6** Words in s. 54(1)(c)(i) substituted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 331(1), 333(1)-(4)**, **Sch. 4 para. 8(2)(a)(i)**; S.S.I. 2005/161, **art. 3** (with savings for s. 54(1)(c) by virtue of S.S.I. 2005/452, **art. 33(18)**)
- F7** Words in s. 54(1)(c) substituted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 331(1), 333(1)-(4)**, **Sch. 4 para. 8(2)(a)(ii)**; S.S.I. 2005/161, **art. 3** (with savings for s. 54(1)(c) by virtue of S.S.I. 2005/452, **art. 33(18)**)
- F8** Words in s. 54(1)(c) substituted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 331(1), 333(1)-(4)**, **Sch. 4 para. 8(2)(a)(iii)**; S.S.I. 2005/161, **art. 3** (with savings for s. 54(1)(c) by virtue of S.S.I. 2005/452, **art. 33(18)**)
- F9** S. 54(2A)(2B) inserted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 331(1), 333(1)-(4)**, **Sch. 4 para. 8(2)(b)**; S.S.I. 2005/161, **art. 3** (as amended (27.9.2005) by the repeal of "(i)" in the inserted subsection (2B) by virtue of S.S.I. 2005/465, art. 3, **Sch. 2**) (with savings for s. 54(2A)(2B) by virtue of S.S.I. 2005/452, **art. 33(18)**)
- F10** Words in s. 54(3) substituted (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 170(2)(b)(i)**, 206(1); S.S.I. 2012/160, art. 3, sch.
- F11** Words in s. 54(3) inserted (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 170(2)(b)(ii)**, 206(1); S.S.I. 2012/160, art. 3, sch.
- F12** Word in s. 54(4) substituted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 331(1), 333(1)-(4)**, **Sch. 4 para. 8(2)(c)**; S.S.I. 2005/161, **art. 3** (with savings for s. 54(4) by virtue of S.S.I. 2005/452, **art. 33(18)**)
- F13** Words in s. 54(5) substituted (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 170(2)(c)**, 206(1); S.S.I. 2012/160, art. 3, sch.
- F14** S. 54(6)(7) repealed (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 170(3)**, 206(1); S.S.I. 2012/160, art. 3, sch.

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F15 Words in s. 54(8) inserted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(1), 333(1)-(4), [Sch. 4 para. 8\(2\)\(d\)](#); S.S.I. 2005/161, [art. 3](#) (with savings for s. 54(8) by virtue of S.S.I. 2005/452, [art. 33\(18\)](#))

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