



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Status: Point in time view as at 01/04/1996. This version of this provision has been superseded.

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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 28 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 28 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.

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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)

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