



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VI

MENTAL DISORDER

[^{F1}Hospital directions]

Textual Amendments

- F1** Ss. 59A-59C and preceding cross-heading substituted for s. 59A (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(1), 333(1)-(4), [Sch. 4 para. 8\(6\)](#); S.S.I. 2005/161, [art. 3](#)

[^{F2}59A Hospital direction

- (1) This section applies where a person, not being a child, (in this section and in sections 59B and 59C of this Act referred to as the “offender”) is convicted on indictment in—
- (a) the High Court; or
 - (b) the sheriff court,
- of an offence punishable by imprisonment.
- (2) If the court is satisfied—
- (a) on the written or oral evidence of two medical practitioners—
 - (i) that the conditions mentioned in subsection (3) below are met in respect of the offender; and
 - (ii) as to the matters mentioned in subsection (4) below; and
 - (b) that, having regard to the matters mentioned in subsection (5) below, it is appropriate,

the court may, in addition to any sentence of imprisonment which it has the power or the duty to impose, make, subject to subsection (6) below, a direction (in this

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Act referred to as a “hospital direction”) authorising the measures mentioned in subsection (7) below.

- (3) The conditions referred to in subsection (2)(a)(i) above are—
 - (a) that the offender 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 offender;
 - (c) that if the offender were not provided with such medical treatment there would be a significant risk—
 - (i) to the health, safety or welfare of the offender; or
 - (ii) to the safety of any other person; and
 - (d) that the making of a hospital direction in respect of the offender is necessary.
- (4) The matters referred to in subsection (2)(a)(ii) above are—
 - (a) that the hospital proposed by the two medical practitioners mentioned in subsection (2)(a) above is suitable for the purpose of giving the medical treatment mentioned in paragraph (b) of subsection (3) above to the offender; and
 - (b) that, were a hospital direction made, the offender could be admitted to such hospital before the expiry of the period of 7 days beginning with the day on which the direction is made.
- (5) The matters referred to in subsection (2)(b) above are—
 - (a) the mental health officer’s report, prepared in accordance with section 59B of this Act, in respect of the offender;
 - (b) all the circumstances, including—
 - (i) the nature of the offence of which the offender was convicted; and
 - (ii) the antecedents of the offender; and
 - (c) any alternative means of dealing with the offender.
- (6) A hospital direction may authorise detention in a state hospital only if, on the written or oral evidence of the two medical practitioners mentioned in subsection (2)(a) above, it appears to the court—
 - (a) that the offender requires to be detained in a state hospital under conditions of special security; and
 - (b) that such conditions of special security can be provided only in a state hospital.
- (7) The measures mentioned in subsection (2) above are—
 - (a) in the case of an offender who, when the hospital direction 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 direction is made, of the offender 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 offender in the specified hospital; and

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- (c) the giving to the offender, in accordance with Part 16 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), of medical treatment.
- (8) The court shall be satisfied as to the condition mentioned in subsection (3)(a) above only if the description of the offender’s mental disorder by each of the medical practitioners mentioned in subsection (2)(a) above specifies, by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), at least one type of mental disorder that the offender has that is also specified by the other.
- (9) A hospital direction—
 - (a) shall specify, by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), the type (or types) of mental disorder that each of the medical practitioners mentioned in subsection (2)(a) above specifies that is also specified by the other; and
 - (b) may include such directions as the court thinks fit for the removal of the offender to, and the detention of the offender in, a place of safety pending the offender’s admission to the specified hospital.
- (10) In this section—
 - “medical treatment” has the same meaning as in section 52D of this Act; and
 - “specified” means specified in the hospital direction.]

Textual Amendments

- F2** Ss. 59A-59C and preceding cross-heading substituted for s. 59A (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(1), 333(1)-(4), [Sch. 4 para. 8\(6\)](#); S.S.I. 2005/161, [art. 3](#)

[^{F3}59B Hospital direction: mental health officer’s report

- (1) This section applies where the court is considering making a hospital direction in relation to an offender under section 59A of this Act.
- (2) If directed to do so by the court, the mental health officer shall—
 - (a) subject to subsection (3) below, interview the offender; and
 - (b) prepare a report in relation to the offender in accordance with subsection (4) below.
- (3) If it is impracticable for the mental health officer to comply with the requirement in subsection (2)(a) above, the mental health officer need not do so.
- (4) The report shall state—
 - (a) the name and address of the offender;
 - (b) if known by the mental health officer, the name and address of the offender’s primary carer;
 - (c) in so far as relevant for the purposes of section 59A of this Act, details of the personal circumstances of the offender; and
 - (d) any other information that the mental health officer considers relevant for the purposes of that section.

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- (5) In this section, “carer”, “primary”, in relation to a carer, and “mental health officer” have the same meanings as in section 57C of this Act.]

Textual Amendments

- F3** Ss. 59A-59C and preceding cross heading substituted for s. 59A (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(1), 333(1)-(4), **Sch. 4 para. 8(6)**; S.S.I. 2005/161, **art. 3**

[^{F4}59C Hospital direction: supplementary

- (1) If, before the expiry of the period of 7 days beginning with the day on which a hospital direction is made, it appears to the court, or, as the case may be, the Scottish Ministers, that, by reason of emergency or other special circumstances, it is not reasonably practicable for the offender to be admitted to the hospital specified in the hospital direction, the court, or, as the case may be, the Scottish Ministers, may direct that the offender be admitted to such other hospital as is specified.
- (2) Where—
- (a) the court makes a direction under subsection (1) above, it shall inform the person having custody of the offender; and
 - (b) the Scottish Ministers make such a direction, they shall inform—
 - (i) the court; and
 - (ii) the person having custody of the offender.
- (3) Where a direction is made under subsection (1) above, the hospital direction shall have effect as if the hospital specified in the hospital direction were the hospital specified by the court, or, as the case may be, the Scottish Ministers, under subsection (1) above.
- (4) In this section, “court” means the court which made the hospital direction.]

Textual Amendments

- F4** Ss. 59A-59C and preceding cross heading substituted for s. 59A (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(1), 333(1)-(4), **Sch. 4 para. 8(6)**; S.S.I. 2005/161, **art. 3**

60 Appeals against hospital orders.

Where a [^{F5}compulsion] order, interim [^{F5}compulsion] order (but not a [^{F6}extension] thereof), guardianship order [^{F7}, 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 [^{F5}compulsion] order has been made, to any right of appeal against any other order or sentence which may be imposed), appeal against that [^{F8}order or, as the case may be, direction in] the same manner as against sentence.

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Textual Amendments

- F5** Word in s. 60 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\(7\)\(a\)](#); S.S.I. 2005/161 {art. 3} (with savings for s. 60 by virtue of [S.S.I. 2005/452](#), [art. 33\(19\)](#))
- F6** Word in s. 60 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\(7\)\(b\)](#); S.S.I. 2005/161 {art. 3} (with savings for s. 60 by virtue of [S.S.I. 2005/452](#), [art. 33\(19\)](#))
- F7** 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](#))
- F8** 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](#))

[^{F9}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—
- [^{F10}(a) a compulsion order;
(b) a restriction order;
(c) a guardianship order;
(d) a decision under section 57(2)(e) of this Act to make no order; or
(e) 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

- F9** S. 60A inserted (1.1.1998) by 1997 c. 48, s. [22](#); S.I. 1997/2323, art. 4, [Sch. 2](#) (subject to [art. 7](#))
- F10** S. 60A(1)(a)-(e) substituted (5.10.2005) for s. 60A(1)(a)(b) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(1), 333(1)-(4), [Sch. 4 para. 8\(8\)](#); S.S.I. 2005/161 {art. 3}

[^{F11}60B Intervention orders

The court may instead of making a [^{F12}compulsion] order ^{F13} . . . 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.]

Textual Amendments

- F11** S. 60B inserted (1.4.2002) by 2000 asp 4, s. [88\(2\)](#), [Sch. 5 para. 26\(3\)](#) (as amended (1.4.2002) by 2001 asp 8, s. [79](#), [Sch. 3 para. 23\(7\)](#); S.S.I. 2001/304, [art. 2](#)); S.S.I. 2001/81, art. 3, [Sch. 2](#)
- F12** Word in s. 60B 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\(9\)](#); S.S.I. 2005/161 {art. 3}

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F13 Words in s. 60B repealed (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. 77(1), 79, [Sch. 1 para. 4\(c\)](#); S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2

[^{F14X1}60CA] **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
 - (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—

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- (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.

Editorial Information

X1 S. 60C: With effect from 5.10.2005 s. 60C became subsumed by new cross-heading "Hospital directions". Versions of this provision as it stood at any time before that date cannot be accessed directly by navigation from this version. To view those versions, it is recommended that users either conduct an 'advanced search' specifying an 'as at' date earlier than 5.10.2005 or navigate via the Part VI heading.

Textual Amendments

F14 Ss. 60C, 60D inserted (21.3.2005 for specified purpose and otherwise 5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), **ss. 134**, 333(1)-(4); S.S.I. 2005/161, arts. {2}, {3}

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.]

Textual Amendments

F14 Ss. 60C, 60D inserted (21.3.2005 for specified purpose and otherwise 5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), **ss. 134**, 333(1)-(4); S.S.I. 2005/161, arts. {2}, {3}

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