



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VI

#### MENTAL DISORDER

*[<sup>F1</sup>Miscellaneous provision]*

#### Textual Amendments

- F1** S. 61 crossheading substituted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\), ss. 46\(2\), 61\(2\)](#); [S.S.I. 2017/197, art. 2, sch.](#)

#### 61 Requirements as to medical evidence.

<sup>F2</sup>(1) Of the medical practitioners whose evidence is taken into account [<sup>F3</sup>in making a finding <sup>F4</sup>... under any of the relevant provisions], at least one shall be [<sup>F5</sup>an approved medical practitioner] .

[<sup>F6</sup>(1A) Of the medical practitioners whose evidence is taken into account under section [<sup>F7</sup>52M(2)(a), 53(2)(a)] , 54(1)(c), [<sup>F8</sup>57A(2)(a)] or 59A(3)(a) and (b) of this Act, at least one shall be employed at the hospital which is to be specified in the order or, as the case may be, direction.]

<sup>F9</sup>(2) Written or oral evidence given for the purposes of [<sup>F10</sup>section 52D(2)(a) or][<sup>F11</sup>any of the relevant provisions] shall include a statement as to whether the person giving the evidence is related to the accused and of any pecuniary interest which that person may have in the admission of the accused to hospital or his reception into guardianship.

<sup>F2</sup>(3) For the purposes of [<sup>F12</sup>making a finding under section [<sup>F13</sup>52D(2)(a) ]<sup>F14</sup>... of this Act or of any of the relevant provisions] a report in writing purporting to be signed by a medical practitioner may, subject to the provisions of this section, be received in evidence without proof of the signature or qualifications of the practitioner; but the court may, in any case, require that the practitioner by whom such a report was signed be called to give oral evidence.

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- (4) Where any such report as aforesaid is tendered in evidence, otherwise than by or on behalf of the accused, then—
- (a) if the accused is represented by counsel or solicitor, a copy of the report shall be given to his counsel or solicitor;
  - (b) if the accused is not so represented, the substance of the report shall be disclosed to the accused or, where he is a child under 16 years of age, to his parent or guardian if present in court;
  - (c) in any case, the accused may require that the practitioner by whom the report was signed be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of the accused,
- and where the court is of the opinion that further time is necessary in the interests of the accused for consideration of that report, or the substance of any such report, it shall adjourn the case.
- (5) For the purpose of calling evidence to rebut the evidence contained in any such report as aforesaid, arrangements may be made by or on behalf of an accused person detained in a hospital or, as respects a report for the purposes of <sup>F15</sup>section 54(1)(c) of this Act], remanded in custody for his examination by any medical practitioner, and any such examination may be made in private.
- <sup>F16</sup>(6) In this section the “relevant provisions” means sections <sup>F17</sup>52M(2)(a), 53(2)(a), 54(1)(c), 57A(2)(a), 58(1A)(a), 59A(2)(a) and 60C(2)(a)] of this Act.
- [ In this section, “approved medical practitioner” has the meaning given by section 22 <sup>F18</sup>(7) of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13).]

#### Textual Amendments

- F2** S. 61(1)(3): It is provided that for “and 58(1)(a)” there shall be substituted “, 58(1)(a) and 58(1A)(a)” (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 26(4)(a)(c)**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F3** Words in s. 61(1) substituted (1.1.1998) by 1997 c. 48, s. 10(2)(a); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F4** Words in s. 61(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), s. 206(1), **sch. 7 para. 41(a)**; S.S.I. 2012/160, art. 3, sch.
- F5** Words in s. 61(1) 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(10)(a)**; S.S.I. 2005/161, **art. 3**
- F6** S. 61(1A) inserted (1.1.1998) by 1997 c. 48, s. 10(2)(b); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F7** Words in s. 61(1A) 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(10)(b)(i)**; S.S.I. 2005/161, **art. 3**
- F8** Words in s. 61(1A) 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(10)(b)(ii)**; S.S.I. 2005/161, **art. 3**
- F9** S. 61(2): It is provided that after “section 58(1)(a)” there shall be inserted “or 58(1A)(a)” (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 26(4)(b)**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F10** Words in s. 61(2) 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(10)(c)**; S.S.I. 2005/161, **art. 3**
- F11** Words in s. 61(2) substituted (1.1.1998) by 1997 c. 48, s. 10(2)(c); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F12** Words in s. 61(3) substituted (1.1.1998) by 1997 c. 48, s. 10(2)(d); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

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- F13** Words in s. 61(3) 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(10)(d)**; S.S.I. 2005/161, **art. 3**
- F14** Words in s. 61(3) repealed (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. 41(b)**; S.S.I. 2012/160, art. 3, sch.
- F15** Words in s. 61(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), s. 206(1), **sch. 7 para. 41(c)**; S.S.I. 2012/160, art. 3, sch.
- F16** S. 61(6) added (1.1.1998) by 1997 c. 48, s. **10(2)(e)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F17** Words in s. 61(6) 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(10)(e)**; S.S.I. 2005/161, **art. 3**
- F18** S. 61(7) 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(10)(f)**; S.S.I. 2005/161, **art. 3**

### [<sup>F19</sup>61A Transfer of person to suitable hospital

- (1) Subsection (2) below applies in relation to a person who is subject to—
  - (a) an assessment order,
  - (b) a treatment order,
  - (c) an interim compulsion order, or
  - (d) a temporary compulsion order (see section 54(1)(c) of this Act).
- (2) The person's responsible medical officer may transfer the person from the specified hospital to another hospital.
- (3) The responsible medical officer may transfer the person only if satisfied that, for the purpose for which the order in question is made—
  - (a) the specified hospital is not suitable, and
  - (b) the other hospital is suitable.
- (4) In considering the suitability of each hospital, the responsible medical officer is to have particular regard to the specific requirements and needs in the person's case.
- (5) As far before the transfer as practicable, the responsible medical officer must—
  - (a) inform the person of the reason for the transfer,
  - (b) notify the managers of the specified hospital, and
  - (c) obtain the consent of—
    - (i) the managers of the other hospital, and
    - (ii) the Scottish Ministers.
- (6) As soon after the transfer as practicable, the responsible medical officer must notify—
  - (a) any solicitor known by the officer to be acting for the person, and
  - (b) the court which made the order in question.
- (7) A person may be transferred under subsection (2) above only once with respect to the order in question.
- (8) Where a person is transferred under subsection (2) above, the order in question has effect as if the other hospital were the specified hospital.
- (9) In this section—

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“managers” has the meaning given by section 329(1) of the Mental Health (Treatment and Care) Scotland) Act 2003,

“responsible medical officer” has the meaning given by section 329(4) of that Act,

“specified hospital” means hospital to which the person is admitted by virtue of the order in question.]

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**Textual Amendments**

**F19** S. 61A inserted (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 46(3)**, 61(2); S.S.I. 2017/197, art. 2, sch.

[<sup>F20</sup>**61B Specification of hospital unit**

- (1) A reference in this Part to a hospital may be read as a reference to a hospital unit.
- (2) In the operation of section 61A of this Act in relation to a transfer from one hospital unit to another within the same hospital—
  - (a) subsection (2) of that section applies by virtue of subsection (1) of that section where the order in question specifies the hospital unit in which the person is to be detained,
  - (b) in subsection (5) of that section—
    - (i) paragraph (b) is to be ignored,
    - (ii) in paragraph (c)(i), the reference to the managers of the other hospital is to be read as a reference to the managers of the hospital in which the person is detained.
- (3) For the purposes of this section, “hospital unit” means any part of a hospital which is treated as a separate unit.]

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**Textual Amendments**

**F20** S. 61B inserted (30.6.2017) by virtue of [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), **ss. 47(2)**, 61(2); S.S.I. 2017/197, art. 2, sch.

**Changes to legislation:**

Criminal Procedure (Scotland) Act 1995, Cross Heading: Miscellaneous provision is up to date with all changes known to be in force on or before 20 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.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5A inserted by [2010 asp 13 Sch. 7 para. 26](#)
- s. 13(1B)(1C) inserted by [2006 asp 10 s. 82\(2\)](#)
- s. 13(2)(aa) inserted by [2006 asp 10 s. 82\(3\)\(b\)](#)
- s. 13(3A) inserted by [2006 asp 10 s. 82\(4\)](#)
- s. 13(5)(ba) inserted by [2006 asp 10 s. 82\(5\)\(a\)](#)
- s. 13(6)(a)(iii) and word inserted by [2006 asp 10 s. 82\(6\)\(b\)](#)
- s. 13(8) inserted by [2006 asp 10 s. 82\(7\)](#)
- s. 22(5A) inserted by [2007 asp 6 s. 7\(2\)\(g\)](#)
- s. 22A(1A) inserted by [2023 asp 4 s. 1\(2\)](#)
- s. 23B(1)(1A) substituted for s. 23B(1) by [2023 asp 4 s. 2\(2\)\(a\)](#)
- s. 23B(6A) inserted by [2023 asp 4 s. 1\(3\)\(c\)](#)
- s. 23B(8)-(10) inserted by [2023 asp 4 s. 2\(2\)\(c\)](#)
- s. 23C(1A) inserted by [2023 asp 4 s. 2\(3\)\(b\)](#)
- s. 23C(3) inserted by [2023 asp 4 s. 2\(3\)\(c\)](#)
- s. 24(2C) inserted by [2023 asp 4 s. 4\(4\)](#)
- s. 24(2AA) inserted by [2023 asp 4 s. 4\(2\)](#)
- s. 73A inserted by [2004 asp 3 s. 2\(3\)](#)
- s. 167(7D)(7E) inserted by [2007 asp 17 sch. 4 para. 1\(3\)](#)
- s. 167(7D) words substituted by [2010 asp 13 Sch. 3 para. 16\(2\)](#)
- s. 167(7E) words substituted by [2010 asp 13 Sch. 3 para. 16\(3\)](#)
- s. 194ZA repealed by [2014 asp 18 sch. 3 para. 25](#)
- s. 200A inserted by [2016 asp 1 s. 85](#)
- s. 205A added by [1997 c. 48 s. 1\(1\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)
- s. 210ZA inserted by [2023 asp 4 s. 5](#)
- s. 249(4A)-(4D) inserted by [2014 asp 1 s. 24](#)
- s. 271D(4A) inserted by [2019 asp 8 s. 6\(4\)](#)
- s. 271F(2)(aa) inserted by [2019 asp 8 s. 10\(4\)](#)
- s. 271AA inserted by [2019 asp 8 s. 6\(2\)](#)
- s. 271BZD inserted by [2019 asp 8 s. 3\(2\)](#)
- s. 288AB288AC inserted by [2024 asp 1 s. 32\(3\)](#)
- Sch. 5A added by [1997 c. 48 s. 1\(2\)](#) (This amendment not applied to legislation.gov.uk. 1997 c. 48, s. 1 repealed (27.6.2003) without ever being in force by [2003 asp 7, s. 19\(3\)](#); S.S.I. 2003/288, art. 2, Sch.)