

SCHEDULE 5 MINOR AND CONSEQUENTIAL AMENDMENTS

Criminal Procedure (Scotland) Act 1995 (c. 46)

- 26 (1) In section 57 of the Criminal Procedure (Scotland) Act 1995—
- (a) in subsection (2)(c) for first “person” there shall be substituted “person’s personal welfare”;
 - (b) in subsection (4) after “58(1),” there shall be inserted “58(1A),”;
 - (c) at the end there shall be added—
“*(6) Section 58A of this Act shall have effect as regards guardianship orders made under subsection (2)(c) of this section.*”
- (2) In section 58 of that Act—
- (a) for subsection (1) there shall be substituted—
“*(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 court—*
 - (a) 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 Mental Health (Scotland) Act 1984 apply in relation to the offender;
 - (b) 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 subsection,*the court may, subject to subsection (2) below, by order authorise his admission to and detention in such hospital as may be specified in the order.*
(1A) Where a person is convicted as mentioned in subsection (1) above and the court is satisfied—
 - (a) on the evidence of two medical practitioners (complying with section 61 of this Act and with any requirements imposed under section 57(3) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) that the grounds set out in section 58(1)(a) of that Act apply in relation to the offender;
 - (b) that no other means provided by or under this Act would be sufficient to enable the offender’s interests in his personal welfare to be safeguarded or promoted,*the court may, subject to subsection (2) below, by order place the offender’s personal welfare under the guardianship of such local authority or of such other person approved by a local authority as may be specified in the order.*”;
 - (b) in subsections (2), (3) and (10) for “subsection (1)” there shall be substituted “subsection (1) or (1A)”;
 - (c) in subsections (5) and (7) after “subsection (1)” there shall be inserted “or paragraph (a) of subsection (1A),”;

Status: This is the original version (as it was originally enacted).

(d) for subsection (6) there shall be substituted—

“(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) on the report of a mental health officer (complying with any requirements imposed by section 57(3) of the Adults with Incapacity (Scotland) Act 2000 (asp 4)) giving his opinion as to the general appropriateness of the order sought, based on an interview and assessment of the person carried out not more than 30 days before it makes the order, that it is necessary in the interests of the personal welfare of the person that he should be placed under guardianship;
- (b) that any person nominated to be appointed a guardian is suitable to be so appointed;
- (c) that the authority or person is willing to receive that person into guardianship; and
- (d) that there is no other guardianship order, under this Act or the Adults with Incapacity (Scotland) Act 2000 (asp 4), in force relating to the person.”;

(e) at the end there shall be added—

“(11) Section 58A of this Act shall have effect as regards guardianship orders made under subsection (1) of this section.”.

(3) After section 60 of that Act there shall be inserted—

“60A 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 where it considers that it would be appropriate to do so.”.

(4) In section 61 of that Act—

- (a) in subsection (1), for “and 58(1)(a)” there shall be substituted “, 58(1)(a) and 58(1A)(a)”;
- (b) in subsection (2), after “section 58(1)(a)” there shall be inserted “or 58(1A)(a)”;
- (c) in subsection (3) for “and 58(1)(a)” there shall be substituted “, 58(1)(a) and 58(1A)(a)”.