



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VI

#### MENTAL DISORDER

#### *[<sup>F1</sup>Criminal responsibility of mentally disordered persons*

##### Textual Amendments

- F1** Ss. 51A, 51B and cross-headings 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. 168, 206(1); S.S.I. 2012/160, art. 3, sch. (with art. 4)

#### **51A Criminal responsibility of persons with mental disorder**

- (1) A person is not criminally responsible for conduct constituting an offence, and is to be acquitted of the offence, if the person was at the time of the conduct unable by reason of mental disorder to appreciate the nature or wrongfulness of the conduct.
- (2) But a person does not lack criminal responsibility for such conduct if the mental disorder in question consists only of a personality disorder which is characterised solely or principally by abnormally aggressive or seriously irresponsible conduct.
- (3) The defence set out in subsection (1) is a special defence.
- (4) The special defence may be stated only by the person charged with the offence and it is for that person to establish it on the balance of probabilities.
- (5) In this section, “conduct” includes acts and omissions.

*Status: Point in time view as at 25/06/2012.*

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*Diminished responsibility*

**51B Diminished responsibility**

- (1) A person who would otherwise be convicted of murder is instead to be convicted of culpable homicide on grounds of diminished responsibility if the person's ability to determine or control conduct for which the person would otherwise be convicted of murder was, at the time of the conduct, substantially impaired by reason of abnormality of mind.
- (2) For the avoidance of doubt, the reference in subsection (1) to abnormality of mind includes mental disorder.
- (3) The fact that a person was under the influence of alcohol, drugs or any other substance at the time of the conduct in question does not of itself—
  - (a) constitute abnormality of mind for the purposes of subsection (1), or
  - (b) prevent such abnormality from being established for those purposes.
- (4) It is for the person charged with murder to establish, on the balance of probabilities, that the condition set out in subsection (1) is satisfied.
- (5) In this section, “conduct” includes acts and omissions.]

*Committal of mentally disordered persons*

**52 Power of court to commit to hospital an accused suffering from mental disorder.**

- (1) Where it appears to the prosecutor in any court before which a person is charged with an offence that the person may be suffering from mental disorder, it shall be the duty of the prosecutor to bring before the court such evidence as may be available of the mental condition of that person.
- (2) <sup>F2</sup> .....
- (3) <sup>F3</sup> .....
- (4) <sup>F4</sup> .....
- (5) <sup>F5</sup> .....
- (6) <sup>F6</sup> .....
- (7) <sup>F7</sup> .....

<b>Textual Amendments</b>	
<b>F2</b>	S. 52(2)-(7) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(2)(3), 333(1)-(4), Sch. 5 Pt. 1; S.S.I. 2005/161, art. 3 (with savings for s. 52(2)-(7) by virtue of S.S.I. 2005/452, art. 33(12))
<b>F3</b>	S. 52(2)-(7) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(2)(3), 333(1)-(4), Sch. 5 Pt. 1; S.S.I. 2005/161, art. 3 (with savings for s. 52(2)-(7) by virtue of S.S.I. 2005/452, art. 33(12))
<b>F4</b>	S. 52(2)-(7) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(2)(3), 333(1)-(4), Sch. 5 Pt. 1; S.S.I. 2005/161, art. 3 (with savings for s. 52(2)-(7) by virtue of S.S.I. 2005/452, art. 33(12))

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- F5** S. 52(2)-(7) repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(2)(3), 333(1)-(4), [Sch. 5 Pt. 1](#); S.S.I. 2005/161, [art. 3](#) (with savings for s. 52(2)-(7) by virtue of S.S.I. 2005/452, [art. 33\(12\)](#))
- F6** S. 52(2)-(7) repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(2)(3), 333(1)-(4), [Sch. 5 Pt. 1](#); S.S.I. 2005/161, [art. 3](#) (with savings for s. 52(2)-(7) by virtue of S.S.I. 2005/452, [art. 33\(12\)](#))
- F7** S. 52(2)-(7) repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 331(2)(3), 333(1)-(4), [Sch. 5 Pt. 1](#); S.S.I. 2005/161, [art. 3](#) (with savings for s. 52(2)-(7) by virtue of S.S.I. 2005/452, [art. 33\(12\)](#))

### *[<sup>F8</sup>Remit of mentally disordered persons from district court*

#### **Textual Amendments**

- F8** Ss. 52A-52U inserted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), [ss. 130](#), 333(1)-(4); S.S.I. 2005/161, [art. 3](#) (as amended (27.9.2005) by S.S.I. 2005/465, [art. 2](#), [sch. 1 para. 32\(13\)\(a\)\(i\)\(ii\)](#), [sch. 2](#))

## **52A Remit of certain mentally disordered persons from district court to sheriff court**

Where—

- (a) a person has been charged in a [<sup>F9</sup>JP court] with an offence punishable by imprisonment; and
- (b) it appears to the court that the person has a mental disorder,
- the [<sup>F9</sup>JP court] shall remit the person to the sheriff in the manner provided by section 7(9) and (10) of this Act.

#### **Textual Amendments**

- F9** Words in s. 52A substituted (10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009 and 14.12.2009 for certain purposes, otherwise 22.2.2010) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 80, 84, [Sch. para. 26\(e\)](#); S.S.I. 2008/42, [art. 3](#), [Sch.](#); S.S.I. 2008/192, [art. 3](#), [Sch.](#); S.S.I. 2008/329, [art. 3](#), [Sch.](#); S.S.I. 2008/362, [art. 3](#), [Sch.](#); S.S.I. 2009/432, [art. 3](#), [Schs. 1, 2](#)

### *Assessment orders*

## **52B Prosecutor's power to apply for assessment order**

(1) Where—

- (a) a person has been charged with an offence;
- (b) a relevant disposal has not been made in the proceedings in respect of the offence; and
- (c) it appears to the prosecutor that the person has a mental disorder,
- the prosecutor may apply to the court for an order under section 52D(2) of this Act (in this Act referred to as an “assessment order”) in respect of that person.

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- (2) Where the prosecutor applies for an assessment order under subsection (1) above, the prosecutor shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.
- (3) Those persons are—
- (a) the person in respect of whom the application is made;
  - (b) any solicitor acting for the person; and
  - (c) in a case where the person is in custody, the Scottish Ministers.
- (4) In this section—
- “court” means any court, other than a [F10JP court], competent to deal with the case; and
- “relevant disposal” means—
- (a) the liberation in due course of law of the person charged;
  - (b) the desertion of summary proceedings *pro loco et tempore* or *simpliciter*;
  - (c) the desertion of solemn proceedings *simpliciter*;
  - (d) the acquittal of the person charged; or
  - (e) the conviction of the person charged.

#### Textual Amendments

**F10** Words in s. 52B(4) substituted (10.3.2008, 2.6.2008, 8.12.2008, 23.2.2009 and 14.12.2009 for certain purposes, otherwise 22.2.2010) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), ss. 80, 84, [Sch. para. 26\(f\)](#); S.S.I. 2008/42, [art. 3](#), Sch.; S.S.I. 2008/192, [art. 3](#), Sch.; S.S.I. 2008/329, [art. 3](#), Sch.; S.S.I. 2008/362, [art. 3](#), Sch.; S.S.I. 2009/432, [art. 3](#), Schs. 1, 2

## 52C Scottish Ministers' power to apply for assessment order

- (1) Where—
- (a) a person has been charged with an offence;
  - (b) the person has not been sentenced;
  - (c) the person is in custody; and
  - (d) it appears to the Scottish Ministers that the person has a mental disorder,
- the Scottish Ministers may apply to the court for an assessment order in respect of that person.
- (2) Where the Scottish Ministers apply for an order under subsection (1) above, they shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.
- (3) Those persons are—
- (a) the person in respect of whom the application is made;
  - (b) any solicitor acting for the person; and
  - (c) in a case where a relevant disposal has not been made in the proceedings in respect of the offence with which the person is charged, the prosecutor.
- (4) In this section, “court” and “relevant disposal” have the same meanings as in section 52B of this Act.

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## **52D Assessment order**

- (1) This section applies where an application for an assessment order is made under section 52B(1) or 52C(1) of this Act.
- (2) If the court is satisfied—
  - (a) on the written or oral evidence of a medical practitioner, as to the matters mentioned in subsection (3) below; and
  - (b) that, having regard to the matters mentioned in subsection (4) below, it is appropriate,  
it may, subject to subsection (5) below, make an assessment order authorising the measures mentioned in subsection (6) below and specifying any matters to be included in the report under section 52G(1) of this Act.
- (3) The matters referred to in subsection (2)(a) above are—
  - (a) that there are reasonable grounds for believing—
    - (i) that the person in respect of whom the application is made has a mental disorder;
    - (ii) that it is necessary to detain the person in hospital to assess whether the conditions mentioned in subsection (7) below are met in respect of the person; and
    - (iii) that if the assessment order were not made there would be a significant risk to the health, safety or welfare of the person or a significant risk to the safety of any other person;
  - (b) that the hospital proposed by the medical practitioner is suitable for the purpose of assessing whether the conditions mentioned in subsection (7) below are met in respect of the person;
  - (c) that, if an assessment order were made, the person could be admitted to such hospital before the expiry of the period of 7 days beginning with the day on which the order is made; and
  - (d) that it would not be reasonably practicable to carry out the assessment mentioned in paragraph (b) above unless an order were made.
- (4) The matters referred to in subsection (2)(b) above are—
  - (a) all the circumstances (including the nature of the offence with which the person in respect of whom the application is made is charged or, as the case may be, of which the person was convicted); and
  - (b) any alternative means of dealing with the person.
- (5) The court may make an assessment order only if the person in respect of whom the application is made has not been sentenced.
- (6) The measures are—
  - (a) in the case of a person who, when the assessment 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;

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- (b) the detention, for the period of 28 days beginning with the day on which the order is made, of the person in the specified hospital; and
  - (c) during the period of 28 days beginning with the day on which the order is made, 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.
- (7) The conditions referred to in paragraphs (a)(ii) and (b) of subsection (3) above are—
- (a) that the person in respect of whom the application is made 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.
- (8) The court may make an assessment order in the absence of the person in respect of whom the application is made only if—
- (a) the person is represented by counsel or a solicitor;
  - (b) that counsel or solicitor is given an opportunity of being heard; and
  - (c) the court is satisfied that it is—
    - (i) impracticable; or
    - (ii) inappropriate,
 for the person to be brought before it.
- (9) An assessment order may include such directions as the court thinks fit for the removal of the person subject to the order to, and detention of the person in, a place of safety pending the person's admission to the specified hospital.
- (10) The court shall, as soon as reasonably practicable after making an assessment order, give notice of the making of the order to—
- (a) the person subject to the order;
  - (b) any solicitor acting for the person;
  - (c) in a case where—
    - (i) the person has been charged with an offence; and
    - (ii) a relevant disposal has not been made in the proceedings in respect of the offence,
 the prosecutor;
  - (d) in a case where the person, immediately before the order was made, was in custody, the Scottish Ministers; and
  - (e) the Mental Welfare Commission.
- (11) In this section—
- “court” has the same meaning as in section 52B of this Act;
  - “medical treatment” has the meaning given by section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);
  - “relevant disposal” has the same meaning as in section 52B of this Act; and
  - “specified” means specified in the assessment order.

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## **52E Assessment order made ex proprio motu: application of section 52D**

- (1) Where—
  - (a) a person has been charged with an offence;
  - (b) the person has not been sentenced; and
  - (c) it appears to the court that the person has a mental disorder,the court may, subject to subsections (2) and (3) below, make an assessment order in respect of that person.
- (2) The court may make an assessment order under subsection (1) above only if it would make one under subsections (2) to (11) of section 52D of this Act; and those subsections shall apply for the purposes of subsection (1) above as they apply for the purposes of subsection (1) of that section, references in those subsections to the person in respect of whom the application is made being construed as references to the person in respect of whom it is proposed to make an assessment order.
- (3) An assessment order made under subsection (1) above shall, for the purposes of this Act and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), be treated as if made under section 52D(2) of this Act.
- (4) In this section, “court” has the same meaning as in section 52B of this Act.

## **52F Assessment order: supplementary**

- (1) If, before the expiry of the period of 7 days beginning with the day on which an assessment order is made—
  - (a) in the case of a person who, immediately before the order was made, was in custody, it appears to the Scottish Ministers; or
  - (b) in any other case, it appears to the court,that, by reason of emergency or other special circumstances, it is not reasonably practicable for the person to be admitted to the hospital specified in the order, the Scottish Ministers, or, as the case may be, the court, may direct that the person be admitted to the hospital specified in the direction.
- (2) Where the court makes a direction under subsection (1) above, it shall, as soon as reasonably practicable after making the direction, inform the person having custody of the person subject to the assessment order of the making of the direction.
- (3) Where the Scottish Ministers make a direction under subsection (1) above, they shall, as soon as reasonably practicable after making the direction, inform—
  - (a) the court;
  - (b) the person having custody of the person subject to the assessment order; and
  - (c) in a case where—
    - (i) the person has been charged with an offence; and
    - (ii) a relevant disposal has not been made in the proceedings in respect of the offence,the prosecutor,of the making of the direction.
- (4) Where a direction is made under subsection (1) above, the assessment order shall have effect as if the hospital specified in the direction were the hospital specified in the order.

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(5) In this section—

“court” means the court which made the assessment order; and

“relevant disposal” has the same meaning as in section 52B of this Act.

## **52G Review of assessment order**

- (1) The responsible medical officer shall, before the expiry of the period of 28 days beginning with the day on which the assessment order is made, submit a report in writing to the court—
  - (a) as to whether the conditions mentioned in section 52D(7) of this Act are met in respect of the person subject to the order; and
  - (b) as to any matters specified by the court under section 52D(2) of this Act.
- (2) The responsible medical officer shall, at the same time as such officer submits the report to the court, send a copy of such report—
  - (a) to the person in respect of whom the report is made;
  - (b) to any solicitor acting for the person;
  - (c) in a case where—
    - (i) the person has been charged with an offence; and
    - (ii) a relevant disposal has not been made in the proceedings in respect of the offence,
 to the prosecutor; and
  - (d) to the Scottish Ministers.
- (3) Subject to subsection (4) below, the court shall, on receiving a report submitted under subsection (1) above, revoke the assessment order and—
  - (a) subject to subsections (7) and (8) below, make a treatment order; or
  - (b) commit the person to prison or such other institution to which the person might have been committed had the assessment order not been made or otherwise deal with the person as the court considers appropriate.
- (4) If, on receiving a report submitted under subsection (1) above, the court is satisfied that further time is necessary to assess whether the conditions mentioned in section 52D(7) of this Act are met in respect of the person subject to the assessment order, it may, on one occasion only, make an order extending the assessment order for a period not exceeding 7 days beginning with the day on which the order otherwise would cease to authorise the detention of the person in hospital.
- (5) The court may, under subsection (4) above, extend an assessment order in the absence of the person subject to the order only if—
  - (a) the person is represented by counsel or a solicitor;
  - (b) that counsel or solicitor is given an opportunity of being heard; and
  - (c) the court is satisfied that it is—
    - (i) impracticable; or
    - (ii) inappropriate,
 for the person to be brought before it.
- (6) Where the court makes an order under subsection (4) above, it shall, as soon as reasonably practicable after making the order, give notice of the making of the order to—



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- (a) the persons mentioned in paragraphs (a) and (b) of subsection (2) above;
  - (b) in a case where—
    - (i) the person has been charged with an offence; and
    - (ii) a relevant disposal has not been made in the proceedings in respect of the offence,the prosecutor;
  - (c) the Scottish Ministers; and
  - (d) the person’s responsible medical officer.
- (7) The court shall make a treatment order under subsection (3)(a) above only if it would make one under subsections (2) to (10) of section 52M of this Act; and those subsections shall apply for the purposes of subsection (3)(a) above as they apply for the purposes of that section, references in those subsections to the person in respect of whom the application is made being construed as references to the person in respect of whom it is proposed to make a treatment order.
- (8) A treatment order made under subsection (3)(a) above shall, for the purposes of this Act and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), be treated as if made under section 52M(2) of this Act.
- (9) The responsible medical officer shall, where that officer is satisfied that there has been a change of circumstances since the assessment order was made which justifies the variation of the order, submit a report to the court in writing.
- (10) Where a report is submitted under subsection (9) above, the court shall—
- (a) if satisfied that the person need not be subject to an assessment order, revoke the order and take any action mentioned in subsection (3)(b) above; or
  - (b) if not so satisfied—
    - (i) confirm the order;
    - (ii) vary the order; or
    - (iii) revoke the order and take any action mentioned in subsection (3)(b) above.
- (11) Sections 52D, 52F, 52H and 52J of this Act and subsections (1) to (3) above apply to the variation of an order under subsection (10)(b)(ii) above as they apply to an assessment order.
- (12) In this section—
- “court” means the court which made the assessment order;
  - “relevant disposal” has the same meaning as in section 52B of this Act; and
  - “responsible medical officer” means the person’s responsible medical officer appointed under section 230 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

## **52H Early termination of assessment order**

- (1) This section applies where—
- (a) in the case of a person who, when the assessment order is made, has not been removed to the hospital specified in the order, the period of 7 days beginning with the day on which the order is made has not expired;
  - (b) in the case of a person—

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- (i) who, when the assessment order is made, has been admitted to the hospital specified in the order; or
  - (ii) who has been removed under paragraph (a) of subsection (6) of section 52D of this Act to the hospital so specified, the period of 28 days beginning with the day on which the order is made has not expired; or
  - (c) in the case of a person in respect of whom the court has made an order under section 52G(4) of this Act extending the assessment order for a period, the period for which the order was extended has not expired.
- (2) An assessment order shall cease to have effect on the occurrence of any of the following events—
- (a) the making of a treatment order in respect of the person subject to the assessment order;
  - (b) in a case where—
    - (i) the person subject to the assessment order has been charged with an offence; and
    - (ii) a relevant disposal had not been made in the proceedings in respect of that offence when the order was made, the making of a relevant disposal in such proceedings;
  - (c) in a case where the person subject to the assessment order has been convicted of an offence but has not been sentenced—
    - (i) the deferral of sentence by the court under section 202(1) of this Act;
    - (ii) the making of one of the orders mentioned in subsection (3) below or
    - (iii) the imposition of any sentence.
- (3) The orders are—
- (a) an interim compulsion order;
  - (b) a compulsion order;
  - (c) a guardianship order;
  - (d) a hospital direction;
  - (e) any order under section 57 of this Act; <sup>F11</sup> . . .
  - (f) <sup>F12</sup> . . . . .
- (4) In this section, “relevant disposal” has the same meaning as in section 52B of this Act.

#### Textual Amendments

**F11** Word in s. 52H(3) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), [Sch. 2 para. 2\(a\)](#); S.S.I. 2010/413, [art. 2](#), Sch. (with art. 3)

**F12** S. 52H(3)(f) repealed (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), [Sch. 2 para. 2\(b\)](#); S.S.I. 2010/413, [art. 2](#), Sch. (with art. 3)

#### 52J Power of court on assessment order ceasing to have effect

- (1) Where, otherwise than by virtue of section 52G(3) or (10) or 52H(2) of this Act, an assessment order ceases to have effect the court shall commit the person who was subject to the order to prison or such other institution to which the person might have

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been committed had the order not been made or otherwise deal with the person as the court considers appropriate.

(2) In this section, “court” has the same meaning as in section 52B of this Act.

#### *Treatment orders*

### **52K Prosecutor’s power to apply for treatment order**

(1) Where—

- (a) a person has been charged with an offence;
- (b) a relevant disposal has not been made in the proceedings in respect of the offence; and
- (c) it appears to the prosecutor that the person has a mental disorder,

the prosecutor may apply to the court for an order under section 52M of this Act (in this Act referred to as a “treatment order”) in respect of that person.

(2) Where the prosecutor applies for a treatment order under subsection (1) above, the prosecutor shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.

(3) Those persons are—

- (a) the person in respect of whom the application is made;
- (b) any solicitor acting for the person; and
- (c) in a case where the person is in custody, the Scottish Ministers.

(4) In this section, “court” and “relevant disposal” have the same meanings as in section 52B of this Act.

### **52L Scottish Ministers' power to apply for treatment order**

(1) Where—

- (a) a person has been charged with an offence;
- (b) the person has not been sentenced;
- (c) the person is in custody; and
- (d) it appears to the Scottish Ministers that the person has a mental disorder,

the Scottish Ministers may apply to the court for a treatment order in respect of that person.

(2) Where the Scottish Ministers apply for an order under subsection (1) above, they shall, as soon as reasonably practicable after making the application, inform the persons mentioned in subsection (3) below of the making of the application.

(3) Those persons are—

- (a) the person in respect of whom the application is made;
- (b) any solicitor acting for the person; and
- (c) in a case where a relevant disposal has not been made in the proceedings in respect of the offence with which the person is charged, the prosecutor.

(4) In this section, “court” and “relevant disposal” have the same meanings as in section 52B of this Act.

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## **52M Treatment order**

- (1) This section applies where an application for a treatment order is made under section 52K(1) or 52L(1) of this Act.
- (2) If the court is satisfied—
  - (a) on the written or oral evidence of two medical practitioners, as to the matters mentioned in subsection (3) below; and
  - (b) that, having regard to the matters mentioned in subsection (4) below, it is appropriate,it may, subject to subsection (5) below, make a treatment order authorising the measures mentioned in subsection (6) below.
- (3) The matters referred to in subsection (2)(a) above are—
  - (a) that the conditions mentioned in subsection (7) of section 52D of this Act are met in relation to the person in respect of whom the application is made;
  - (b) that the hospital proposed by the approved medical practitioner and the medical practitioner is suitable for the purpose of giving medical treatment to the person; and
  - (c) that, if a treatment order were made, such person could be admitted to such hospital before the expiry of the period of 7 days beginning with the day on which the order is made.
- (4) The matters referred to in subsection (2)(b) above are—
  - (a) all the circumstances (including the nature of the offence with which the person in respect of whom the application is made is charged or, as the case may be, of which the person was convicted); and
  - (b) any alternative means of dealing with the person.
- (5) The court may make a treatment order only if the person in respect of whom the application is made has not been sentenced.
- (6) The measures are—
  - (a) in the case of a person who, when the treatment 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.
- (7) The court may make a treatment order in the absence of the person in respect of whom the application is made only if—
  - (a) the person is represented by counsel or solicitor;
  - (b) that counsel or solicitor is given an opportunity of being heard; and
  - (c) the court is satisfied that it is—
    - (i) impracticable; or

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- (ii) inappropriate,  
for the person to be brought before it.
- (8) A treatment order may include such directions as the court thinks fit for the removal of the person subject to the order to, and detention of the person in, a place of safety pending the person's admission to the specified hospital.
- (9) The court shall, as soon as reasonably practicable after making a treatment order, give notice of the making of the order to—
  - (a) the person subject to the order;
  - (b) any solicitor acting for the person;
  - (c) in a case where—
    - (i) the person has been charged with an offence; and
    - (ii) a relevant disposal has not been made in the proceedings in respect of the offence,the prosecutor;
  - (d) in a case where the person, immediately before the order was made—
    - (i) was in custody; or
    - (ii) was subject to an assessment order and, immediately before that order was made, was in custody,the Scottish Ministers; and
  - (e) the Mental Welfare Commission.
- (10) In this section—
  - “court” has the same meaning as in section 52B of this Act;
  - “medical treatment” has the same meaning as in section 52D of this Act; and
  - “specified” means specified in the treatment order.

## **52N Treatment order made ex proprio motu: application of section 52M**

- (1) Where—
  - (a) a person has been charged with an offence;
  - (b) the person has not been sentenced; and
  - (c) it appears to the court that the person has a mental disorder,the court may, subject to subsections (2) and (3) below, make a treatment order in respect of that person.
- (2) The court may make a treatment order under subsection (1) above only if it would make one under subsections (2) to (10) of section 52M of this Act; and those subsections shall apply for the purposes of subsection (1) above as they apply for the purposes of subsection (1) of that section, references in those subsections to the person in respect of whom the application is made being construed as references to the person in respect of whom it is proposed to make a treatment order.
- (3) A treatment order made under subsection (1) above shall, for the purposes of this Act and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), be treated as if made under section 52M(2) of this Act.
- (4) In this section, “court” has the same meaning as in section 52B of this Act.

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## **52P Treatment order: supplementary**

- (1) If, before the expiry of the period of 7 days beginning with the day on which the treatment order is made—
  - (a) in the case of a person to whom subsection (2) below applies, it appears to the Scottish Ministers; or
  - (b) in any other case, it appears to the court,
 that, by reason of emergency or other special circumstances, it is not reasonably practicable for the person to be admitted to the hospital specified in the order, the Scottish Ministers, or, as the case may be, the court, may direct that the person be admitted to the hospital specified in the direction.
- (2) This subsection applies to—
  - (a) a person who is in custody immediately before the treatment order is made; or
  - (b) a person—
    - (i) who was subject to an assessment order immediately before the treatment order is made; and
    - (ii) who was in custody immediately before that assessment order was made.
- (3) Where the court makes a direction under subsection (1) above, it shall, as soon as reasonably practicable after making the direction, inform the person having custody of the person subject to the treatment order of the making of the direction.
- (4) Where the Scottish Ministers make a direction under subsection (1) above, they shall, as soon as reasonably practicable after making the direction, inform—
  - (a) the court;
  - (b) the person having custody of the person subject to the treatment order; and
  - (c) in a case where—
    - (i) the person has been charged with an offence; and
    - (ii) a relevant disposal has not been made in the proceedings in respect of the offence,
 the prosecutor,
 of the making of the direction.
- (5) Where a direction is made under subsection (1) above, the treatment order shall have effect as if the hospital specified in the direction were the hospital specified in the order.
- (6) In this section—
 

“court” means the court which made the treatment order; and

“relevant disposal” has the same meaning as in section 52B of this Act.

## **52Q Review of treatment order**

- (1) The responsible medical officer shall, where that officer is satisfied—
  - (a) that any of the conditions mentioned in section 52D(7) of this Act are no longer met in respect of the person subject to the treatment order; or
  - (b) that there has otherwise been a change of circumstances since the order was made which makes the continued detention of the person in hospital by virtue of the order no longer appropriate,

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submit a report in writing to the court.

- (2) Where a report is submitted under subsection (1) above, the court shall—
- (a) if satisfied that the person need not be subject to the treatment order—
    - (i) revoke the order; and
    - (ii) commit the person to prison or such other institution to which the person might have been committed had the order not been made or otherwise deal with the person as the court considers appropriate; or
  - (b) if not so satisfied—
    - (i) confirm the order;
    - (ii) vary the order; or
    - (iii) revoke the order and take any action mentioned in paragraph (a)(ii) above.
- (3) Sections 52M, 52P, this section and sections 52R and 52S of this Act apply to the variation of a treatment order under subsection (2)(b)(ii) above as they apply to a treatment order.
- (4) In this section—
- “court” means the court which made the treatment order; and
  - “responsible medical officer” means the person’s responsible medical officer appointed under section 230 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

## **52R Termination of treatment order**

- (1) This section applies—
- (a) where, in the case of a person who, when the treatment order is made, has not been removed to the hospital specified in the order, the period of 7 days beginning with the day on which the order is made has not expired; or
  - (b) in the case of a person—
    - (i) who, when the treatment order is made, has been admitted to the hospital specified in the order; or
    - (ii) who has been removed under paragraph (a) of subsection (6) of section 52M of this Act to the hospital so specified.
- (2) A treatment order shall cease to have effect on the occurrence of any of the following events—
- (a) in a case where—
    - (i) the person subject to the treatment order has been charged with an offence; and
    - (ii) a relevant disposal had not been made in the proceedings in respect of such offence when the order was made,the making of a relevant disposal in such proceedings;
  - (b) in a case where the person subject to the treatment order has been convicted of an offence but has not been sentenced—
    - (i) the deferral of sentence by the court under section 202(1) of this Act;
    - (ii) the making of one of the orders mentioned in subsection (3) below; or
    - (iii) the imposition of any sentence.

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(3) The orders are—

- (a) an interim compulsion order;
- (b) a compulsion order;
- (c) a guardianship order;
- (d) a hospital direction;
- (e) any order under section 57 of this Act; <sup>F13</sup> . . .
- (f) <sup>F14</sup> .....

(4) In this section, “relevant disposal” has the same meaning as in section 52B of this Act.

#### Textual Amendments

**F13** Word in s. 52R(3) repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 3(a)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)

**F14** S. 52R(3)(f) repealed (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 3(b)**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)

#### 52S Power of court on treatment order ceasing to have effect

- (1) Where, otherwise than by virtue of section 52Q(2) or 52R(2) of this Act, a treatment order ceases to have effect the court shall commit the person who was subject to the order to prison or such other institution to which the person might have been committed had the order not been made or otherwise deal with the person as the court considers appropriate.
- (2) In this section, “court” has the same meaning as in section 52B of this Act.

#### *Prevention of delay in trials*

#### 52T Prevention of delay in trials: assessment orders and treatment orders

- (1) Subsections (4) to (9) of section 65 of this Act shall apply in the case of a person committed for an offence until liberated in due course of law who is detained in hospital by virtue of an assessment order or a treatment order as those subsections apply in the case of an accused who is—
- (a) committed for an offence until liberated in due course of law; and
  - (b) detained by virtue of that committal.
- (2) Section 147 of this Act shall apply in the case of a person charged with an offence in summary proceedings who is detained in hospital by virtue of an assessment order or a treatment order as it applies in the case of an accused who is detained in respect of that offence.
- (3) Any period during which, under—
- (a) section 221 (as read with sections 222 and 223) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13); or
  - (b) section 224 (as read with sections 225 and 226) of that Act,
- a patient’s detention is not authorised shall be taken into account for the purposes of the calculation of any of the periods mentioned in subsection (4) below.



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- (4) Those periods are—
- (a) the total periods of 80 days, 110 days and 140 days referred to in subsection (4) of section 65 of this Act as applied by subsection (1) above;
  - (b) those total periods as extended under subsection (5) or, on appeal, under subsection (8) of that section as so applied;
  - (c) the total of 40 days referred to in section 147 of this Act (prevention of delay in trials in summary proceedings) as applied by subsection (2) above; and
  - (d) that period as extended under subsection (2) of that section or, on appeal, under subsection (3) of that section as so applied.

*Effect of assessment and treatment orders on pre-existing mental health orders*

## 52U Effect of assessment order and treatment order on pre-existing mental health order

- (1) This section applies where—
- (a) a patient is subject to a relevant order; and
  - (b) an assessment order or a treatment order is made in respect of the patient.
- (2) The relevant order shall cease to authorise the measures specified in it for the period during which the patient is subject to the assessment order or, as the case may be, treatment order.
- (4) In this section, a “relevant order” means—
- (a) an interim compulsory treatment order made under section 65(2) of the 2003 Act; and
  - (b) a compulsory treatment order made under section 64(4)(a) of that Act.]

*[<sup>F15</sup>Interim compulsion orders]*

### Textual Amendments

**F15** Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, art. 33(14))

## [<sup>F16</sup>53 Interim compulsion order.

- (1) This section applies where a person (referred to in this section and in sections 53A to 53D of this Act as an “offender”)—
- (a) is convicted in the High Court or the sheriff court of an offence punishable by imprisonment (other than an offence the sentence for which is fixed by law); or
  - (b) is remitted to the High Court by the sheriff under any enactment for sentence for such an offence.
- (2) If the court is satisfied—
- (a) on the written or oral evidence of two medical practitioners—
    - (i) that the offender has a mental disorder; and

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- (ii) as to the matters mentioned in subsection (3) below; and
- (b) that, having regard to the matters mentioned in subsection (4) below, it is appropriate,
- it may, subject to subsection (7) below, make an order (in this Act referred to as an “interim compulsion order”) authorising the measures mentioned in subsection (8) below and specifying any matters to be included in the report under section 53B(1) of this Act.
- (3) The matters referred to in subsection (2)(a)(ii) above are—
- (a) that there are reasonable grounds for believing—
    - (i) that the conditions mentioned in subsection (5) below are likely to be met in respect of the offender; and
    - (ii) that the offender’s mental disorder is such that it would be appropriate to make one of the disposals mentioned in subsection (6) below in relation to the offender;
  - (b) that the hospital to be specified in the order is suitable for the purpose of assessing whether the conditions mentioned in subsection (5) below are met in respect of the offender;
  - (c) that, were an interim compulsion order 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 order is made; and
  - (d) that it would not be reasonably practicable for the assessment mentioned in paragraph (b) above to be made unless an order were made.
- (4) The matters referred to in subsection (2)(b) above are—
- (a) all the circumstances (including the nature of the offence of which the offender is convicted); and
  - (b) any alternative means of dealing with the offender.
- (5) The conditions referred to in paragraphs (a)(i) and (b) of subsection (3) above are—
- (a) 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;
  - (b) 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
  - (c) that the making of an interim compulsion order in respect of the offender is necessary.
- (6) The disposals are—
- (a) both a compulsion order that authorises detention in hospital by virtue of section 57A(8)(a) of this Act and a restriction order; or
  - (b) a hospital direction.
- (7) An interim compulsion order 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 hospital under conditions of special security; and

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- (b) that such conditions of special security can be provided only in a state hospital.
- (8) The measures are—
- (a) in the case of an offender who, when the interim 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 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, for a period not exceeding 12 weeks beginning with the day on which the order is made, of the offender in the specified hospital; and
  - (c) during the period of 12 weeks beginning with the day on which the order is made, 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.
- (9) An interim compulsion order 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) The court may make an interim compulsion order in the absence of the offender only if—
- (a) the offender is represented by counsel or solicitor;
  - (b) that counsel or solicitor is given an opportunity of being heard; and
  - (c) the court is satisfied that it is—
    - (i) impracticable; or
    - (ii) inappropriate,for the offender to be brought before it.
- (11) The court shall, as soon as reasonably practicable after making an interim compulsion order, give notice of the making of the order to—
- (a) the person subject to the order;
  - (b) any solicitor acting for that person;
  - (c) the Scottish Ministers; and
  - (d) the Mental Welfare Commission.
- (12) Where a court makes an interim compulsion order in relation to an offender, the court—
- (a) shall not, at the same time—
    - (i) make an order under section 200 of this Act;
    - (ii) impose a fine;
    - (iii) pass sentence of imprisonment;
    - (iv) make a compulsion order;
    - (v) make a guardianship order;
    - [<sup>F17</sup>(vi) impose a community payback order;
    - (vii) make a drug treatment and testing order; or
    - (viii) make a restriction of liberty order,]

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in relation of the offender;

(b) may make any other order which it has power to make apart from this section.

(13) In this section—

“medical treatment” has the same meaning as in section 52D of this Act;

“sentence of imprisonment” includes any sentence or order for detention;  
and

“specified” means specified in the interim compulsion order.]

#### Textual Amendments

**F16** Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, **art. 33(14)**)

**F17** S. 53(12)(a)(vi)-(viii) substituted for s. 53(12)(a)(vi)(vii) (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), **Sch. 2 para. 4**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)

#### [<sup>F18</sup>53A Interim compulsion order: supplementary

(1) If, before the expiry of the period of 7 days beginning with the day on which the interim compulsion order 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 order, the court, or, as the case may be, the Scottish Ministers, may direct that the offender be admitted to the hospital specified in the direction.

(2) Where—

(a) the court makes a direction under subsection (1) above, it shall, as soon as reasonably practicable after making the direction, inform the person having custody of the offender; and

(b) the Scottish Ministers make such a direction, they shall, as soon as reasonably practicable after making the direction, inform—

(i) the court; and

(ii) the person having custody of the offender.

(3) Where a direction is made under subsection (1) above, the interim compulsion order shall have effect as if the hospital specified in the direction were the hospital specified in the order.

(4) In this section, “court” means the court which made the interim compulsion order.]

#### Textual Amendments

**F18** Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, **art. 33(14)**)

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### **[<sup>F19</sup>53B Review and extension of interim compulsion order**

- (1) The responsible medical officer shall, before the expiry of the period specified by the court under section 53(8)(b) of this Act, submit a report in writing to the court—
  - (a) as to the matters mentioned in subsection (2) below; and
  - (b) as to any matters specified by the court under section 53(2) of this Act.
- (2) The matters are—
  - (a) whether the conditions mentioned in section 53(5) of this Act are met in respect of the offender;
  - (b) the type (or types) of mental disorder that the offender has; and
  - (c) whether it is necessary to extend the interim compulsion order to allow further time for the assessment mentioned in section 53(3)(b) of this Act.
- (3) The responsible medical officer shall, at the same time as such officer submits the report to the court, send a copy of such report to—
  - (a) the offender; and
  - (b) any solicitor acting for the offender.
- (4) The court may, on receiving the report submitted under subsection (1) above, if satisfied that the extension of the order is necessary, extend the order for such period (not exceeding 12 weeks beginning with the day on which the order would cease to have effect were such an extension not made) as the court may specify.
- (5) The court may extend an interim compulsion order under subsection (4) above for a period only if, by doing so, the total period for which the offender will be subject to the order does not exceed 12 months beginning with the day on which the order was first made.
- (6) The court may, under subsection (4) above, extend an interim compulsion order in the absence of the offender only if—
  - (a) the offender is represented by counsel or a solicitor;
  - (b) that counsel or solicitor is given an opportunity of being heard; and
  - (c) the court is satisfied that it is—
    - (i) impracticable; or
    - (ii) inappropriate,for the offender to be brought before it.
- (7) Subsections (1) to (9) of this section shall apply for the purposes of an interim compulsion order extended under subsection (4) above as they apply for the purposes of an interim compulsion order, references in those subsections to the period specified by the court under section 53(8)(b) of this Act being construed as references to the period specified by the court under subsection (4) above.
- (8) Where a report is submitted under subsection (1) above, the court may, before the expiry of the period specified by the court under section 53(8)(b) of this Act—
  - (a) revoke the interim compulsion order and make one of the disposals mentioned in section 53(6) of this Act; or
  - (b) revoke the interim compulsion order and deal with the offender in any way (other than by making an interim compulsion order) in which the court could have dealt with the offender if no such order had been made.
- (9) In this section—

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“court” means the court which made the interim compulsion order; and  
 “responsible medical officer” means the responsible medical officer appointed in respect of the offender under section 230 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13).]

#### Textual Amendments

**F19** Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, art. 33(14))

#### [<sup>F20</sup>53C Early termination of interim compulsion order

- (1) An interim compulsion order shall cease to have effect if the court—
  - (a) makes a compulsion order in relation to the offender;
  - (b) makes a hospital direction in relation to the offender; or
  - (c) deals with the offender in some other way, including the imposing of a sentence of imprisonment on the offender.
- (2) In this section, “court” means the court which made the interim compulsion order.]

#### Textual Amendments

**F20** Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, art. 33(14))

#### [<sup>F21</sup>53D Power of court on interim compulsion order ceasing to have effect

- (1) Where, otherwise than by virtue of section 53B(8) or 53C of this Act, an interim compulsion order ceases to have effect the court may deal with the offender who was subject to the order in any way (other than the making of a new interim compulsion order) in which it could have dealt with the offender if no such order had been made.
- (2) In this section, “court” means the court which made the interim compulsion order.]

#### Textual Amendments

**F21** Ss. 53-53D and cross-heading substituted (5.10.2005) for s. 53 and cross-heading by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), **ss. 131**, 333(1)-(4); S.S.I. 2005/161, **art. 3** (with savings for s. 53 by virtue of S.S.I. 2005/452, art. 33(14))

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## *f<sup>F22</sup> Acquittal involving mental disorder*

### Textual Amendments

- F22** S. 53E and cross-heading 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. 169**, 206(1); S.S.I. 2012/160, art. 3, sch.

### **53E Acquittal involving mental disorder**

- (1) Where the prosecutor accepts a plea (by the person charged with the commission of an offence) of the special defence set out in section 51A of this Act, the court must declare that the person is acquitted by reason of the special defence.
- (2) Subsection (3) below applies where—
  - (a) the prosecutor does not accept such a plea, and
  - (b) evidence tending to establish the special defence set out in section 51A of this Act is brought before the court.
- (3) Where this subsection applies the court is to—
  - (a) in proceedings on indictment, direct the jury to find whether the special defence has been established and, if they find that it has, to declare whether the person is acquitted on that ground,
  - (b) in summary proceedings, state whether the special defence has been established and, if it states that it has, declare whether the person is acquitted on that ground.]

## *f<sup>F23</sup> Unfitness for trial*

### Textual Amendments

- F23** S. 53F and cross-heading 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(1)**, 206(1); S.S.I. 2012/160, art. 3, sch.

### **53F Unfitness for trial**

- (1) A person is unfit for trial if it is established on the balance of probabilities that the person is incapable, by reason of a mental or physical condition, of participating effectively in a trial.
- (2) In determining whether a person is unfit for trial the court is to have regard to—
  - (a) the ability of the person to—
    - (i) understand the nature of the charge,
    - (ii) understand the requirement to tender a plea to the charge and the effect of such a plea,
    - (iii) understand the purpose of, and follow the course of, the trial,
    - (iv) understand the evidence that may be given against the person,
    - (v) instruct and otherwise communicate with the person's legal representative, and

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- (b) any other factor which the court considers relevant.
- (3) The court is not to find that a person is unfit for trial by reason only of the person being unable to recall whether the event which forms the basis of the charge occurred in the manner described in the charge.
- (4) In this section “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.]

F24 ...

#### Textual Amendments

**F24** 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 [F25Unfitness for trial: further provision].

- (1) Where the court is satisfied <sup>F26</sup>... that a person charged with the commission of an offence is [F27unfit 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 [F28or, 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 [F29the 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,
 make an order (in this section referred to as a [F30temporary compulsion order]) [F31authorising 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*.

[F32(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—



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- (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 <sup>F33</sup>whether a person is unfit for trial], adjourn the case in order that investigation of his mental <sup>F34</sup>[or physical] condition may be carried out.
- (4) The court which made a temporary <sup>F35</sup>[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 <sup>F36</sup>[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.
- <sup>F37</sup>(6) .....
- <sup>F37</sup>(7) .....
- (8) In this section
- <sup>F38</sup>“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.

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### Textual Amendments

- F25** 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.
- F26** 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.
- F27** 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.
- F28** 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)
- F29** 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)**)
- F30** 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)**)
- F31** 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)**)
- F32** 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)**)
- F33** 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.
- F34** 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.
- F35** 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)**)
- F36** 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.
- F37** 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.
- F38** 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)**)

### Examination of facts

#### 55 Examination of facts.

- (1) At an examination of facts ordered under section 54(1)(b) of this Act the court shall, on the basis of the evidence (if any) already given in the trial and such evidence, or further evidence, as may be led by either party, determine whether it is satisfied—

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- (a) beyond reasonable doubt, as respects any charge on the indictment or, as the case may be, the complaint in respect of which the accused was being or was to be tried, that he did the act or made the omission constituting the offence; and
  - (b) on the balance of probabilities, that there are no grounds for acquitting him.
- (2) Where the court is satisfied as mentioned in subsection (1) above, it shall make a finding to that effect.
- (3) Where the court is not so satisfied it shall, subject to subsection (4) below, acquit the person of the charge.
- (4) Where, as respects a person acquitted under subsection (3) above, the court is satisfied as to the matter mentioned in subsection (1)(a) above but it appears to the court that the person was <sup>F39</sup>not, because of section 51A of this Act, criminally responsible for the conduct] constituting the offence, the court shall state whether the acquittal is <sup>F40</sup>by reason of the special defence set out in that section] .
- (5) Where it appears to the court that it is not practical or appropriate for the accused to attend an examination of facts the court may, if no objection is taken by or on behalf of the accused, order that the examination of facts shall proceed in his absence.
- (6) Subject to the provisions of this section, section 56 of this Act and any Act of Adjournal the rules of evidence and procedure and the powers of the court shall, in respect of an examination of facts, be as nearly as possible those applicable in respect of a trial.
- (7) For the purposes of the application to an examination of facts of the rules and powers mentioned in subsection (6) above, an examination of facts—
  - (a) commences when the indictment or, as the case may be, complaint is called; and
  - (b) concludes when the court—
    - (i) acquits the person under subsection (3) above;
    - (ii) makes an order under subsection (2) of section 57 of this Act; or
    - (iii) decides, under paragraph (e) of that subsection, not to make an order.

#### Textual Amendments

- F39** Words in s. 55(4) 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. 37(a)**; S.S.I. 2012/160, art. 3, sch.
- F40** Words in s. 55(4) 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. 37(b)**; S.S.I. 2012/160, art. 3, sch.

## 56 Examination of facts: supplementary provisions.

- (1) An examination of facts ordered under section 54(1)(b) of this Act may, where the order is made at the trial diet <sup>F41</sup>or, in proceedings on indictment, at 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) , be held immediately following the making of the order and, where it is so held, the citation of the accused and any witness to the trial diet <sup>F42</sup>, first diet or, as the case may be, preliminary hearing] shall be a valid citation to the examination of facts.

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- (2) <sup>F43</sup> .....
- (3) Where an accused person is not legally represented at an examination of facts the court shall appoint counsel or a solicitor to represent his interests.
- (4) The court may, on the motion of the prosecutor and after hearing the accused, order that the examination of facts shall proceed in relation to a particular charge, or particular charges, in the indictment or, as the case may be, complaint in priority to other such charges.
- (5) The court may, on the motion of the prosecutor and after hearing the accused, at any time desert the examination of facts *pro loco et tempore* as respects either the whole indictment or, as the case may be, complaint or any charge therein.
- (6) Where, and to the extent that, an examination of facts has, under subsection (5) above, been deserted *pro loco et tempore*—
- (a) in the case of proceedings on indictment, the Lord Advocate may, at any time, raise and insist in a new indictment; or
  - (b) in the case of summary proceedings, the prosecutor may at any time raise a fresh libel,
- notwithstanding any time limit which would otherwise apply in respect of prosecution of the alleged offence.
- (7) If, in a case where a court has made a finding under subsection (2) of section 55 of this Act, a person is subsequently charged, whether on indictment or on a complaint, with an offence arising out of the same act or omission as is referred to in subsection (1) of that section, any order made under section 57(2) of this Act shall, with effect from the commencement of the later proceedings, cease to have effect.
- (8) For the purposes of subsection (7) above, the later proceedings are commenced when the indictment or, as the case may be, the complaint is served.

#### Textual Amendments

- F41** Words in s. 56(1) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), **Sch. para. 14(a)(i)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F42** Words in s. 56(1) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), **Sch. para. 14(a)(ii)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)
- F43** S. 56(2) repealed (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), **Sch. para. 14(b)**; S.S.I. 2004/405, **art. 2**, Sch. 1 (subject to arts. 3-5)

*Disposal [F44 where accused found not criminally responsible]*

#### Textual Amendments

- F44** Words in s. 57 cross-heading substituted (with application in accordance with art. 3 of the commencing S.S.I.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), **sch. 7 para. 38**; S.S.I. 2012/160, **art. 3**, sch.

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**57 Disposal of case where accused found <sup>F45</sup>not criminally responsible or unfit for trial] .**

(1) This section applies where—

- (a) a person is <sup>F46</sup>acquitted by reason of the special defence set out in section 51A of this Act] ; or
- (b) following an examination of facts under section 55, a court makes a finding under subsection (2) of that section.

(2) Subject to subsection (3) below, where this section applies the court may, as it thinks fit—

- (a) <sup>F47</sup>subject to subsection (4) below, make a compulsion order authorising the detention of the person in a hospital];
- (b) in addition to making <sup>F48</sup>such a compulsion order, subject to subsection (4A) below, make a restriction order in respect of the person] ;
- <sup>F49</sup><sup>F50</sup>(bb) subject to subsections (3A) and (4B) below, make an interim compulsion order in respect of the person;]]
- (c) <sup>F51</sup>subject to subsections (4C) and (6) below, make a guardianship order in respect of the person];
- (d) <sup>F52</sup>subject to subsection (5) below,]make a supervision and treatment order (within the meaning of paragraph 1(1) of Schedule 4 to this Act <sup>F53</sup>in respect of the person]); or
- (e) make no order.

<sup>F54</sup>(3) Where the court is satisfied, having regard to a report submitted in respect of the person following an interim <sup>F55</sup>compulsion] order, that, on a balance of probabilities, the risk his being at liberty presents to the safety of the public at large is high, it shall make orders under both paragraphs (a) and (b) of subsection (2) above in respect of that person.]

<sup>F56</sup>(3A) The court may make an interim compulsion order under paragraph (bb) of subsection (2) above in respect of a person only where it has not previously made such an order in respect of the person under that paragraph.]

<sup>F57</sup>(4) For the purposes of subsection (2)(a) above—

- (a) subsections (2) to (16) of section 57A of this Act shall apply as they apply for the purposes of subsection (1) of that section, subject to the following modifications—
  - (i) references to the offender shall be construed as references to the person to whom this section applies; and
  - (ii) in subsection (4)(b)(i), the reference to the offence of which the offender was convicted shall be construed as a reference to the offence with which the person to whom this section applies was charged;
- (b) section 57B of this Act shall have effect subject to the modification that references to the offender shall be construed as references to the person to whom this section applies;
- (c) section 57C of this Act shall have effect subject to the following modifications—
  - (i) references to the offender shall be construed as references to the person to whom this section applies; and
  - (ii) references to section 57A of this Act shall be construed as references to subsection (2)(a) above; and

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- (d) section 57D of this Act shall have effect subject to the modification that references to the offender shall be construed as references to the person to whom this section applies.
- (4A) For the purposes of subsection (2)(b) above, section 59 of this Act shall have effect.
- (4B) For the purposes of subsection (2)(bb) above—
- (a) subsections (2) to (13) of section 53 of this Act shall apply as they apply for the purposes of subsection (1) of that section, subject to the following modifications—
- (i) references to the offender shall be construed as references to the person to whom this section applies;
  - (ii) in subsection (3)(a)(ii), the reference to one of the disposals mentioned in subsection (6) of that section shall be construed as a reference to the disposal mentioned in subsection (6)(a) of that section;
  - (iii) in subsection (4)(a), the reference to the offence of which the offender is convicted shall be construed as a reference to the offence with which the person to whom this section applies is charged; and
  - (iv) subsection (6)(b) shall not apply;
- (b) section 53A of this Act shall have effect subject to the modification that references to the offender shall be construed as references to the person to whom this section applies;
- (c) section 53B of this Act shall have effect subject to the following modifications—
- (i) references to the offender shall be construed as references to the person to whom this section applies; and
  - (ii) for paragraphs (a) and (b) of subsection (8) there shall be substituted
    - (a) make an order in respect of the person under paragraph (a), (b), (c) or (d) of subsection (2) of section 57 of this Act; or
    - (b) decide, under paragraph (e) of that subsection, to make no order in respect of the person.”;
- (d) section 53C of this Act shall have effect subject to the following modifications—
- (i) references to the offender shall be construed as references to the person to whom this section applies; and
  - (ii) for paragraphs (a) to (c) of subsection (1) there shall be substituted—
    - “(a) makes an order in respect of the person under paragraph (a), (b), (c) or (d) of subsection (2) of section 57 of this Act; or
    - (b) decides, under paragraph (e) of that subsection, to make no order in respect of the person.”; and
- (e) section 53D of this Act shall have effect subject to the modification that the reference to the offender shall be construed as a reference to the person to whom this section applies.
- (4C) For the purposes of subsection (2)(c) above, subsections (1A), (6) to (8) and (11) of section 58 of this Act shall apply, subject to the modifications that the reference to a person convicted and any references to the offender shall be construed as references to the person to whom this section applies.]

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(5) Schedule 4 to this Act shall have effect as regards supervision and treatment orders.

[<sup>F58</sup>(6) Section 58A of this Act shall have effect as regards guardianship orders made under subsection (2)(c) of this section.]

#### Textual Amendments

- F45** Words in s. 57 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), s. 206(1), **sch. 7 para. 38**; S.S.I. 2012/160, art. 3, sch.
- F46** Words in s. 57(1)(a) 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. 39**; S.S.I. 2012/160, art. 3, sch.
- F47** Words in s. 57(2)(a) 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(3)(a)(i)**; S.S.I. 2005/161, **art. 3**
- F48** Words in s. 57(2)(b) 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(3)(a)(ii)**; S.S.I. 2005/161, **art. 3**
- F49** S. 57(2)(bb) inserted (4.10.2005) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. **2(a)**, 89; S.S.I. 2005/433, **art. 2**
- F50** S. 57(2)(bb) 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(3)(a)(iii)**; S.S.I. 2005/161, **art. 3**
- F51** Words in s. 57(2)(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(3)(a)(iv)**; S.S.I. 2005/161, **art. 3**
- F52** Words in s. 57(2)(d) 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(3)(a)(v)(A)**; S.S.I. 2005/161, **art. 3**
- F53** Words in s. 57(2)(d) 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(3)(a)(v)(B)**; S.S.I. 2005/161, **art. 3**
- F54** S. 57(3) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. {2(b)}, 89; S.S.I. 2003/288, **art. 2**, Sch.
- F55** Word in s. 57(3) 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(3)(b)**; S.S.I. 2005/161, **art. 3**
- F56** S. 57(3A) 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(3)(c)**; S.S.I. 2005/161, **art. 3**
- F57** S. 57(4)-(4C) substituted (5.10.2005) for s. 57(4) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(1), 333(1)-(4), **Sch. 4 para. 8(3)(d)**; S.S.I. 2005/161, **art. 3**
- F58** S. 57(6) inserted (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 26(1)(c)**; S.S.I. 2001/81, art. 3, **Sch. 2**

#### Modifications etc. (not altering text)

- C1** S. 57(2)(a) extended (1.1.1998) by 1997 c. 48, s. **9(1)(a)** (subject to s. 9(2)); S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

### <sup>F59</sup>Compulsion orders

#### Textual Amendments

- F59** Ss. 57A-57D and cross-heading inserted (21.3.2005 for certain purposes and otherwise 5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. **133**, 333(1)-(4); S.S.I. 2005/161, **arts. 2, 3**, Sch. 1 (as amended (27.9.2005) by S.S.I. 2005/465, art. 2, **Sch. 1 para. 32(14)**)

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## 57A Compulsion order

- (1) This section applies where a person (in this section and in sections 57B to 57D of this Act, referred to as the “offender”)—
  - (a) is convicted in the High Court or the sheriff court of an offence punishable by imprisonment (other than an offence the sentence for which is fixed by law); or
  - (b) is remitted to the High Court by the sheriff under any enactment for sentence for such an offence.
- (2) If the court 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 offender; and
  - (b) that, having regard to the matters mentioned in subsection (4) below, it is appropriate,
 it may, subject to subsection (5) below, make an order (in this Act referred to as a “compulsion order”) authorising, subject to subsection (7) below, for the period of 6 months beginning with the day on which the order is made such of the measures mentioned in subsection (8) below as may be specified in the order.
- (3) The conditions referred to in subsection (2)(a) 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 compulsion order in respect of the offender is necessary.
- (4) The matters referred to in subsection (2)(b) above are—
  - (a) the mental health officer’s report, prepared in accordance with section 57C 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.
- (5) The court may, subject to subsection (6) below, make a compulsion order authorising the detention of the offender in a hospital by virtue of subsection (8)(a) below only if satisfied, on the written or oral evidence of the two medical practitioners mentioned in subsection (2)(a) above, that—
  - (a) the medical treatment mentioned in subsection (3)(b) above can be provided only if the offender is detained in hospital;
  - (b) the offender could be admitted to the hospital to be specified in the order before the expiry of the period of 7 days beginning with the day on which the order is made; and
  - (c) the hospital to be so specified is suitable for the purpose of giving the medical treatment to the offender.



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- (6) A compulsion order 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 hospital under conditions of special security; and
  - (b) that such conditions of special security can be provided only in a state hospital.
- (7) Where the court—
- (a) makes a compulsion order in respect of an offender; and
  - (b) also makes a restriction order in respect of the offender,
- the compulsion order shall authorise the measures specified in it without limitation of time.
- (8) The measures mentioned in subsection (2) above are—
- (a) the detention of the offender in the specified hospital;
  - (b) 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;
  - (c) the imposition of a requirement on the offender to attend—
    - (i) on specified or directed dates; or
    - (ii) at specified or directed intervals,specified or directed places with a view to receiving medical treatment;
  - (d) the imposition of a requirement on the offender to attend—
    - (i) on specified or directed dates; or
    - (ii) at specified or directed intervals,specified or directed places with a view to receiving community care services, relevant services or any treatment, care or service;
  - (e) subject to subsection (9) below, the imposition of a requirement on the offender to reside at a specified place;
  - (f) the imposition of a requirement on the offender to allow—
    - (i) the mental health officer;
    - (ii) the offender’s responsible medical officer; or
    - (iii) any person responsible for providing medical treatment, community care services, relevant services or any treatment, care or service to the offender who is authorised for the purposes of this paragraph by the offender’s responsible medical officer,to visit the offender in the place where the offender resides;
  - (g) the imposition of a requirement on the offender to obtain the approval of the mental health officer to any change of address; and
  - (h) the imposition of a requirement on the offender to inform the mental health officer of any change of address before the change takes effect.
- (9) The court may make a compulsion order imposing, by virtue of subsection (8)(e) above, a requirement on an offender to reside at a specified place which is a place used for the purpose of providing a care home service only if the court is satisfied that the person providing the care home service is willing to receive the offender.
- (10) The Scottish Ministers may, by regulations made by statutory instrument, make provision for measures prescribed by the regulations to be treated as included among the measures mentioned in subsection (8) above.

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- (11) The power conferred by subsection (10) above may be exercised so as to make different provision for different cases or descriptions of case or for different purposes.
- (12) No regulations shall be made under subsection (10) above unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Scottish Parliament.
- (13) 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.
- (14) A compulsion order—
- (a) shall specify—
    - (i) 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 the offender has that is also specified by the other; and
    - (ii) if the order does not, by virtue of subsection (8)(a) above, authorise the detention of the offender in hospital, the name of the hospital the managers of which are to have responsibility for appointing the offender’s responsible medical officer; and
  - (b) may include—
    - (i) in a case where a compulsion order authorises the detention of the offender in a specified hospital by virtue of subsection (8)(a) above; or
    - (ii) in a case where a compulsion order imposes a requirement on the offender to reside at a specified place by virtue of subsection (8)(e) above,

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 or, as the case may be, place.
- (15) Where the court makes a compulsion order in relation to an offender, the court—
- (a) shall not—
    - (i) make an order under section 200 of this Act;
    - (ii) make an interim compulsion order;
    - (iii) make a guardianship order;
    - (iv) pass a sentence of imprisonment;
    - (v) impose a fine;
    - [<sup>F60</sup>(vi) impose a community payback order;
    - (vii) make a drug treatment and testing order; or
    - (viii) make a restriction of liberty order,]

in relation to the offender;
  - (b) may make any other order that the court has power to make apart from this section.

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(16) In this section—

“care home service” has the meaning given by [F61] paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010];

“community care services” has the meaning given by section 5A(4) of the Social Work (Scotland) Act 1968 (c. 49);

“medical treatment” has the same meaning as in section 52D of this Act;

“relevant services” has the meaning given by section 19(2) of the Children (Scotland) Act 1995 (c. 36);

“responsible medical officer”, in relation to an offender, means the responsible medical officer appointed in respect of the offender under section 230 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13);

“restriction order” means an order under section 59 of this Act;

“sentence of imprisonment” includes any sentence or order for detention; and

“specified” means specified in the compulsion order.

#### Textual Amendments

**F60** S. 57A(15)(a)(vi)-(viii) substituted for s. 57A(15)(a)(vi)(vii) (1.2.2011) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. 14(2), 206(1), [Sch. 2 para. 5](#); S.S.I. 2010/413, [art. 2](#), Sch. (with art. 3)

**F61** Words in s. 57A(16) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, [sch. 1 para. 7](#)

### 57B Compulsion order authorising detention in hospital or requiring residence at place: ancillary provision

(1) Where a compulsion order—

(a) authorises the detention of an offender in a specified hospital; or

(b) imposes a requirement on an offender to reside at a specified place,

this section authorises the removal, before the expiry of the period of 7 days beginning with the day on which the order is made, of the offender to the specified hospital or place, by any of the persons mentioned in subsection (2) below.

(2) Those persons are—

(a) a constable;

(b) 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; and

(c) a specified person.

(3) In this section, “specified” means specified in the compulsion order.

### 57C Mental health officer’s report

(1) This section applies where the court is considering making a compulsion order in relation to an offender under section 57A of this Act.

(2) If directed to do so by the court, the mental health officer shall—

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- (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 57A 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.
- (5) In this section—
- “carer”, and “primary”, in relation to a carer, have the meanings given by section 329(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13);
  - “mental health officer” means a person appointed (or deemed to be appointed) under section 32(1) of that Act; and
  - “named person” has the meaning given by section 329(1) of that Act.

## **57D Compulsion order: supplementary**

- (1) If, before the expiry of the period of 7 days beginning with the day on which a compulsion order authorising detention of the offender in a hospital 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 order, the court, or, as the case may be, the Scottish Ministers, may direct that the offender be admitted to the hospital specified in the direction.
- (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 compulsion order shall have effect as if the hospital specified in the direction were the hospital specified in the order.
- (4) In this section, “court” means the court which made the compulsion order.]

### **Modifications etc. (not altering text)**

- C2** S. 57D(1) modified (5.10.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Transitional and Savings Provisions\) Order 2005 \(S.S.I. 2005/452\)](#), **art. 9(5)**

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### *Hospital orders and guardianship*

## **58 Order for hospital admission or guardianship.**

[<sup>F62</sup>(1) <sup>F63</sup> .....

(1A) Where a person is convicted [<sup>F64</sup> 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 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.]

(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 [<sup>F65</sup>subsection <sup>F66</sup> . . . (1A)] 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 make an order under [<sup>F65</sup>subsection <sup>F66</sup> . . . (1A)] 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) <sup>F67</sup> .....

(5) <sup>F67</sup> .....

[<sup>F68</sup>(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 [<sup>F69</sup>person’s personal welfare which makes the same provision as the guardianship order which the court proposes to make under this section] .]

(7) A <sup>F70</sup> . . . guardianship order [<sup>F71</sup>made under this section] shall specify [<sup>F72</sup> (by reference to the appropriate paragraph (or paragraphs) of the definition of “mental disorder” in

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section 328(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13)) the type (or types) of mental disorder that the [<sup>F73</sup>person] has] ; and no such order shall be made unless [<sup>F74</sup>the descriptions of the [<sup>F73</sup>person’s] mental disorder by each of the medical practitioners, whose evidence is taken into account under subsection (1A) (a) above, specifies at least one type of mental disorder that is also specified by the other].

(8) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or [<sup>F75</sup>impose a community payback order or make a drug treatment and testing 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) <sup>F76</sup> .....

(10) <sup>F76</sup> .....

[<sup>F77</sup>(11) Section 58A of this Act shall have effect as regards guardianship orders made under <sup>F78</sup> . . . this section.]

#### Textual Amendments

- F62** S. 58(1)(1A) substituted for s. 58(1) (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 26(2)(a)**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F63** S. 58(1) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(2)(3), 333(1)-(4), **Sch. 5 Pt. 1**; S.S.I. 2005/161, **art. 3**
- F64** Words in s. 58(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(4)(a)**; S.S.I. 2005/161, **art. 3**
- F65** Words in s. 58(2)(3)(10) substituted (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 26(2)(b)**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F66** Words in s. 58(2)(3) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(2)(3), 333(1)-(4), **Sch. 5 Pt. 1**; S.S.I. 2005/161, **art. 3**
- F67** S. 58(4)(5) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(2)(3), 333(1)-(4), **Sch. 5 Pt. 1**; S.S.I. 2005/161, **art. 3**
- F68** S. 58(6) substituted (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 26(2)(d)**; S.S.I. 2001/81, art. 3, **Sch. 2**
- F69** Words in s. 58(6)(d) substituted (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), ss. 77(1), 79, **Sch. 1 para. 4(a)**; S.S.I. 2007/334, **art. 2(b)**, Sch. 2
- F70** Words in s. 58(7) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(2)(3), 333(1)-(4), **Sch. 5 Pt. 1**; S.S.I. 2005/161, **art. 3**
- F71** Words in s. 58(7) inserted (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), ss. 77(1), 79, **Sch. 1 para. 4(b)(i)**; S.S.I. 2007/334, **art. 2(b)**, Sch. 2
- F72** Words in s. 58(7) 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(4)(b)(i)**; S.S.I. 2005/161, **art. 3**
- F73** Word in s. 58(7) substituted (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), ss. 77(1), 79, **Sch. 1 para. 4(b)(ii)**; S.S.I. 2007/334, **art. 2(b)**, Sch. 2
- F74** Words in s. 58(7) 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(4)(b)(ii)**; S.S.I. 2005/161, **art. 3**
- F75** Words in s. 58(8) substituted (1.2.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 14(2), 206(1), **Sch. 2 para. 6**; S.S.I. 2010/413, **art. 2**, Sch. (with art. 3)
- F76** S. 58(9)(10) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(2)(3), 333(1)-(4), **Sch. 5 Pt. 1**; S.S.I. 2005/161, **art. 3**

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**F77** S. 58(11) inserted (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 26(2)(e)**; S.S.I. 2001/81, art. 3, **Sch. 2**

**F78** Words in s. 58(11) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(2)(3), 333(1)-(4), **Sch. 5 Pt. 1**; S.S.I. 2005/161, **art. 3**

**Modifications etc. (not altering text)**

**C3** 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**)

**[<sup>F79</sup>58A Application of Adults with Incapacity (Scotland) Act 2000**

- (1) Subject to the provisions of this section, the provisions of Parts 1, 5, 6 and 7 of the Adults with Incapacity (Scotland) Act 2000 (asp 4) (“the 2000 Act”) apply—
  - (a) to a guardian appointed by an order of the court under section 57(2)(c), 58(1) or 58(1A) of this Act (in this section referred to as a “guardianship order”) whether appointed before or after the coming into force of these provisions, as they apply to a guardian with powers relating to the personal welfare of an adult appointed under section 58 of that Act;
  - (b) to a person authorised under an intervention order under section [<sup>F80</sup>60B] of this Act as they apply to a person so authorised under section 53 of that Act.
- (2) In making a guardianship order the court shall have regard to any regulations made by the Scottish Ministers under section 64(11) of the 2000 Act and—
  - (a) shall confer powers, which it shall specify in the order, relating only to the personal welfare of the person;
  - (b) may appoint a joint guardian;
  - (c) may appoint a substitute guardian;
  - (d) may make such consequential or ancillary order, provision or direction as it considers appropriate.
- (3) Without prejudice to the generality of subsection (2), or to any other powers conferred by this Act, the court may—
  - (a) make any order granted by it subject to such conditions and restrictions as appear to it to be appropriate;
  - (b) order that any reports relating to the person who will be the subject of the order be lodged with the court or that the person be assessed or interviewed and that a report of such assessment or interview be lodged;
  - (c) make such further inquiry or call for such further information as appears to it to be appropriate;
  - (d) make such interim order as appears to it to be appropriate pending the disposal of the proceedings.
- (4) Where the court makes a guardianship order it shall forthwith send a copy of the interlocutor containing the order to the Public Guardian who shall—
  - (a) enter prescribed particulars of the appointment in the register maintained by him under section 6(2)(b)(iv) of the 2000 Act;
  - (b) unless he considers that the notification would be likely to pose a serious risk to the person’s health notify the person of the appointment of the guardian; and
  - (c) notify the local authority and the Mental Welfare Commission of the terms of the interlocutor.

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- (5) A guardianship order shall continue in force for a period of 3 years or such other period (including an indefinite period) as, on cause shown, the court may determine.
- (6) Where any proceedings for the appointment of a guardian under section 57(2)(c) or 58(1) of this Act have been commenced and not determined before the date of coming into force of section 84 of, and paragraph 26 of schedule 5 to, the Adults with Incapacity (Scotland) Act 2000 (asp 4) they shall be determined in accordance with this Act as it was immediately in force before that date.]

#### Textual Amendments

- F79** S. 58A inserted (1.4.2002) by 2000 asp 4, s. 84(2); S.S.I. 2001/81, art. 3, Sch. 2
- F80** S. 58A: "In section 84 (applications to guardians appointed under [Criminal Procedure \(Scotland\) Act 1995 \(c. 46\)](#), in subsection (1)(b) of the section prospectively inserted by subsection (2), for the words "60A" there is substituted "60B" (1.4.2002) by virtue of 2001 asp 8, s. 79, Sch. 3 para. 23(5); S.S.I. 2002/162, art. 2(h) (subject to arts. 3-13)

## 59 Hospital orders: restrictions on discharge.

- (1) Where a [<sup>F81</sup>compulsion order authorising the detention of a person in a hospital by virtue of paragraph (a) of section 57A(8) of this Act] is made in respect of a person, and it appears to the court—
- having regard to the nature of the offence with which he is charged;
  - the antecedents of the person; and
  - the risk that as a result of his mental disorder he would commit offences if set at large,
- that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section, further order that the person shall be subject to the special restrictions set out in [<sup>F82</sup>Part 10 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13)] , without limit of time.
- (2) An order under this section (in this Act referred to as “a restriction order”) shall not be made in the case of any person unless the [<sup>F83</sup>approved medical practitioner] , whose evidence is taken into account by the court under [<sup>F84</sup>section 57A(2)(a)] of this Act, has given evidence orally before the court.
- [<sup>F85</sup>2A) The court may, in the case of a person in respect of whom it did not, before making the compulsion order, make an interim compulsion order, make a restriction order in respect of the person only if satisfied that, in all the circumstances, it was not appropriate to make an interim compulsion order in respect of the person.]
- (3) <sup>F86</sup> .....

#### Textual Amendments

- F81** Words in s. 59(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(5)(a)(i); S.S.I. 2005/161, art. 3
- F82** Words in s. 59(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(5)(a)(ii); S.S.I. 2005/161, art. 3
- F83** Words in s. 59(2) 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(5)(b)(i); S.S.I. 2005/161, art. 3



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- F84** Words in s. 59(2) 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(5)(b)(ii)**; S.S.I. 2005/161, **art. 3**
- F85** S. 59(2A) 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(5)(c)**; S.S.I. 2005/161, **art. 3**
- F86** S. 59(3) repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. **331(2)(3)**, 333(1)-(4), {Sch. 5 Pt. 1}; S.S.I. 2005/161 {art. 3}

### *[<sup>F87</sup>Hospital directions]*

#### **Textual Amendments**

- F87** 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**

#### **[<sup>F88</sup>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—
- the High Court; or
  - the sheriff court,
- of an offence punishable by imprisonment.
- (2) If the court is satisfied—
- on the written or oral evidence of two medical practitioners—
    - that the conditions mentioned in subsection (3) below are met in respect of the offender; and
    - as to the matters mentioned in subsection (4) below; and
  - 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 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—
- that the offender has a mental disorder;
  - that medical treatment which would be likely to—
    - prevent the mental disorder worsening; or
    - alleviate any of the symptoms, or effects, of the disorder,is available for the offender;
  - that if the offender were not provided with such medical treatment there would be a significant risk—
    - to the health, safety or welfare of the offender; or
    - to the safety of any other person; and
  - 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—

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- (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
  - (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

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- (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

**F88** 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](#)

#### [<sup>F89</sup>**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.
- (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

**F89** 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](#)

#### [<sup>F90</sup>**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

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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

- F90** 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 [<sup>F91</sup>compulsion] order, interim [<sup>F91</sup>compulsion] order (but not a [<sup>F92</sup>extension] thereof), guardianship order [<sup>F93</sup>, 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 [<sup>F91</sup>compulsion] order has been made, to any right of appeal against any other order or sentence which may be imposed), appeal against that [<sup>F94</sup>order or, as the case may be, direction in] the same manner as against sentence.

#### Textual Amendments

- F91** 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\(19\)](#))
- F92** 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\(19\)](#))
- F93** 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](#))
- F94** 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](#))

## [<sup>F95</sup>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—

- [<sup>F96</sup>(a) a compulsion order;
- (b) a restriction order;

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- (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

- F95** S. 60A inserted (1.1.1998) by 1997 c. 48, s. 22; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)
- F96** 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}

#### <sup>F97</sup> 60B Intervention orders

The court may instead of making a [<sup>F98</sup>compulsion] order <sup>F99</sup>. . . 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

- F97** 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**
- F98** 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}
- F99** 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(e)**; S.S.I. 2007/334, art. 2(b), Sch. 2

#### <sup>X1</sup> <sup>F100</sup> 60C 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—

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- (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 [<sup>F101</sup>in a case where the person is acquitted by reason of the special defence set out in section 51A of this Act.]
  - <sup>F102</sup>(a) .....
  - <sup>F102</sup>(b) .....
- (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

- F100** 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}
- F101** Words in s. 60C(7) inserted (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. 40\(a\)](#); S.S.I. 2012/160, art. 3, sch.

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**F102** S. 60C(7)(a)(b) 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. 40(b); S.S.I. 2012/160, art. 3, sch.

## **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**

**F100** 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}

### *Medical evidence*

## **61 Requirements as to medical evidence.**

- <sup>F103</sup>(1) Of the medical practitioners whose evidence is taken into account [<sup>F104</sup>in making a finding <sup>F105</sup>... under any of the relevant provisions], at least one shall be [<sup>F106</sup>an approved medical practitioner] .
- <sup>F107</sup>(1A) Of the medical practitioners whose evidence is taken into account under section [<sup>F108</sup>52M(2)(a), 53(2)(a)] , 54(1)(c), [<sup>F109</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>F110</sup>(2) Written or oral evidence given for the purposes of [<sup>F111</sup>section 52D(2)(a) or][<sup>F112</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.



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- <sup>F103</sup>(3) For the purposes of [<sup>F113</sup>making a finding under section [<sup>F114</sup>52D(2)(a) ]<sup>F115</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.
- (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>F116</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>F117</sup>(6) In this section the “relevant provisions” means sections [<sup>F118</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>F119</sup>(7) of the Mental Health (Care and Treatment)(Scotland) Act 2003 (asp 13).]

#### Textual Amendments

- F103** 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**
- F104** 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)
- F105** 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.
- F106** 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
- F107** 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)
- F108** 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
- F109** 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
- F110** 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**



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- F111** 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**
- F112** 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**)
- F113** 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**)
- F114** 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**
- F115** 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.
- F116** 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.
- F117** 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**)
- F118** 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**
- F119** 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**

### *Appeals under Part VI*

## **62 Appeal by accused [F120 not criminally responsible or unfit for trial].**

- (1) A person may appeal to the High Court against—
- a finding made under section 54(1) of this Act that he is [F121 unfit for trial] so that his trial cannot proceed or continue, or the refusal of the court to make such a finding;
  - a finding under section 55(2) of this Act; or
  - an order made under section 57(2) of this Act.
- (2) An appeal under subsection (1) above shall be—
- in writing; and
  - lodged—
    - in the case of an appeal under paragraph (a) of that subsection, not later than seven days after the date of the finding or refusal which is the subject of the appeal;
    - in the case of an appeal under paragraph (b), or both paragraphs (b) and (c) of that subsection, not later than 28 days after the conclusion of the examination of facts;
    - in the case of an appeal under paragraph (c) of that subsection against an order made on an acquittal, by [F122 reason of the special defence set out in section 51A of this Act], not later than 14 days after the date of the acquittal;
    - in the case of an appeal under that paragraph against an order made on a finding under section 55(2), not later than 14 days after the conclusion of the examination of facts,or within such longer period as the High Court may, on cause shown, allow.

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- (3) Where the examination of facts was held in connection with proceedings on indictment, subsections (1)(a) and (2)(b)(i) above are without prejudice to section 74(1) of this Act.
- (4) Where an appeal is taken under subsection (1) above, the period from the date on which the appeal was lodged until it is withdrawn or disposed of shall not count towards any time limit applying in respect of the case.
- (5) An appellant in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.
- (6) In disposing of an appeal under subsection (1) above the High Court may—
  - (a) affirm the decision of the court of first instance;
  - (b) make any other finding or order which that court could have made at the time when it made the finding [<sup>F123</sup>, order or other disposal] which is the subject of the appeal; or
  - (c) remit the case to that court with such directions in the matter as the High Court thinks fit.
- (7) Section 60 of this Act shall not apply in relation to any order as respects which a person has a right of appeal under subsection (1)(c) above.

**Textual Amendments**

**F120** Words in s. 62 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), s. 206(1), **sch. 7 para. 42**; S.S.I. 2012/160, art. 3, sch.

**F121** Words in s. 62(1)(a) 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. 42(a)**; S.S.I. 2012/160, art. 3, sch.

**F122** Words in s. 62(2)(b)(iii) 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. 42(b)**; S.S.I. 2012/160, art. 3, sch.

**F123** Words in s. 62(6)(b) substituted (1.1.1998) by 1997 c. 48, s. 62(1), **Sch. 1 para. 21(7)**; S.I. 1997/2323, art. 4, **Sch. 2** (subject to art. 7)

**63 Appeal by prosecutor [<sup>F124</sup>where accused found not criminally responsible or unfit for trial].**

- (1) The prosecutor may appeal to the High Court on a point of law against—
  - (a) a finding under subsection (1) of section 54 of this Act that an accused is [<sup>F125</sup>unfit for trial] so that his trial cannot proceed or continue;
  - [<sup>F126</sup>(b) an acquittal by reason of the special defence set out in section 51A of this Act;]
  - (c) an acquittal under section 55(3) of this Act (whether or not [<sup>F127</sup>by reason of the special defence set out in section 51A of this Act]); or
  - [<sup>F128</sup>(d) .....
- (2) An appeal under subsection (1) above shall be—
  - (a) in writing; and
  - (b) lodged—

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- (i) in the case of an appeal under paragraph (a) or (b) of that subsection, not later than seven days after the finding or, as the case may be, the acquittal which is the subject of the appeal;
  - (ii) in the case of an appeal under paragraph (c) <sup>F129</sup> . . . of that subsection, not later than seven days after the conclusion of the examination of facts,  
or within such longer period as the High Court may, on cause shown, allow.
- (3) Where the examination of facts was held in connection with proceedings on indictment, subsections (1)(a) and (2)(b)(i) above are without prejudice to section 74(1) of this Act.
- (4) A respondent in an appeal under this subsection shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.
- (5) In disposing of an appeal under subsection (1) above the High Court may—
- (a) affirm the decision of the court of first instance;
  - (b) make any other finding [<sup>F130</sup>order or disposal] which that court could have made at the time when it made the finding [<sup>F130</sup>or acquittal] which is the subject of the appeal; or
  - (c) remit the case to that court with such directions in the matter as the High Court thinks fit.
- (6) In this section, “the prosecutor” means, in relation to proceedings on indictment, the Lord Advocate.

#### Textual Amendments

- F124** Words in s. 63 heading substituted (with application in accordance with art. 3 of the commencing S.S.I.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 7 para. 43](#); [S.S.I. 2012/160](#), art. 3, sch.
- F125** Words in s. 63(1)(a) 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. 43\(a\)](#); [S.S.I. 2012/160](#), art. 3, sch.
- F126** S. 63(1)(b) 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. 43\(b\)](#); [S.S.I. 2012/160](#), art. 3, sch.
- F127** Words in s. 63(1)(c) 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. 43\(c\)](#); [S.S.I. 2012/160](#), art. 3, sch.
- F128** S. 63(1)(d) repealed (1.1.1998) by [1997 c. 48](#), s. 62(1)(2), [Sch. 1 para. 21\(8\)\(a\)](#), [Sch. 3](#); [S.I. 1997/2323](#), art. 4, [Sch. 2](#) (subject to art. 7)
- F129** Words in s. 63(2)(b)(ii) repealed (1.1.1998) by [1997 c. 48](#), s. 62(1)(2), [Sch. 1 para. 21\(8\)\(b\)](#), [Sch. 3](#); [S.I. 1997/2323](#), art. 4, [Sch. 2](#) (subject to art. 7)
- F130** Words in s. 63(5)(b) substituted (1.1.1998) by [1997 c. 48](#), s. 62(1), [Sch. 1 para. 21\(8\)\(c\)\(i\)\(ii\)](#); [S.I. 1997/2323](#), art. 4, [Sch. 2](#) (subject to art. 7)

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