



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VI

MENTAL DISORDER

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) Where a court remands or commits for trial a person charged with any offence who appears to the court to be suffering from mental disorder, and the court is satisfied that a hospital is available for his admission and suitable for his detention, the court may, instead of remanding him in custody, commit him to that hospital.
- (3) Where an accused is committed to a hospital as mentioned in subsection (2) above, the hospital shall be specified in the warrant, and if the responsible medical officer is satisfied that he is suffering from mental disorder of a nature or degree which warrants his admission to a hospital under Part V of the Mental Health (Scotland) Act 1984, he shall be detained in the hospital specified in the warrant for the period for which he is remanded or the period of committal, unless before the expiration of that period he is liberated in due course of law.
- (4) When the responsible medical officer has examined the person so detained he shall report the result of that examination to the court and, where the report is to the effect that the person is not suffering from mental disorder of such a nature or degree as aforesaid, the court may commit him to any prison or other institution to which he might have been committed had he not been committed to hospital or may otherwise deal with him according to law.

- (5) No person shall be committed to a hospital under this section except on the written or oral evidence of a registered medical practitioner.
- (6) Without prejudice to subsection (4) above, the court may review an order under subsection (2) above 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 deal with him in such way mentioned in subsection (4) above as the court thinks appropriate;
 - (b) in any other case, the court may—
 - (i) confirm or vary the order; or
 - (ii) revoke the order and deal with him in such way mentioned in subsection (4) above as the court considers appropriate.
- (7) Subsections (2) to (5) above shall apply to the review of an order under subsection (6) above as they apply to the making of an order under subsection (2) above.

Interim hospital orders

53 Interim hospital orders

- (1) Where, in the case of a person to whom this section applies the court is satisfied on the written or oral evidence of two medical practitioners (complying with subsection (2) below and section 61 of this Act)—
- (a) that the offender is suffering from mental disorder within the meaning of section 1(2) of the Mental Health (Scotland) Act 1984; and
 - (b) that there is reason to suppose—
 - (i) that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case; and
 - (ii) that, having regard to section 58(5) of this Act, the hospital to be specified in any such hospital order may be a State hospital,
 the court may, before making a hospital order or dealing with the offender in some other way, make an order (to be known as “an interim hospital order”) authorising his admission to and detention in a state hospital or such other hospital as for special reasons the court may specify in the order.
- (2) Of the medical practitioners whose evidence is taken into account under subsection (1) above at least one shall be employed at the hospital which is to be specified in the order.
- (3) An interim hospital order shall not be made in respect of an offender unless the court is satisfied that the hospital which is to be specified in the order, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.
- (4) Where a court makes an interim hospital order it shall not make any other order for detention or impose a fine or pass sentence of imprisonment or make a probation order or a community service order in respect of the offence, but may make any other order which it has power to make apart from this section.
- (5) The court by which an interim hospital order is made may include in the order such direction as it thinks fit for the conveyance of the offender to a place of safety and his

detention therein pending his admission to the hospital within the period of 28 days referred to in subsection (3) above.

- (6) An interim hospital order—
- (a) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but
 - (b) may be renewed for further periods of not more than 28 days at a time if it appears to the court on the written or oral evidence of the responsible medical officer that the continuation of the order is warranted,
- but no such order shall continue in force for more than six months in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides, after considering the written or oral evidence of the responsible medical officer, to deal with the offender in some other way.
- (7) An interim hospital order may be renewed under subsection (6) above without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.
- (8) If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court which made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.
- (9) When an interim hospital order ceases to have effect in relation to an offender the court may deal with him in any way (other than by making a new interim hospital order) in which it could have dealt with him if no such order had been made.
- (10) The power conferred on the court by this section is without prejudice to the power of the court under section 200(1) of this Act to remand a person in order that an inquiry may be made into his physical or mental condition.
- (11) This section applies to any person—
- (a) convicted in the High Court or the sheriff court of an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law);
 - (b) charged on complaint in the sheriff court if the sheriff is satisfied that he did the act or made the omission charged but does not convict him; or
 - (c) remitted to the sheriff court from the district court under section 58(10) of this Act if the sheriff is satisfied as mentioned in paragraph (b) above.
- (12) In this section “the court” means—
- (a) the High Court, as regards a person—
 - (i) convicted on indictment in that court; or
 - (ii) convicted on indictment in the sheriff court and remitted for sentence to the High Court; and
 - (b) the sheriff court, as regards a person—
 - (i) convicted in the sheriff court and not remitted as mentioned in paragraph (a)(ii) above; or
 - (ii) referred to in paragraph (b) or (c) of subsection (11) above.

*Insanity in bar of trial***54 Insanity in bar of trial**

- (1) Where the court is satisfied, on the written or oral evidence of two medical practitioners, that a person charged with the commission of an offence is insane 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 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 he is suffering from mental disorder of a nature or degree which warrants his admission to hospital under Part V of the Mental Health (Scotland) Act 1984; 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 “temporary hospital order”) committing him to that hospital 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*.
- (3) The court may, before making a finding under subsection (1) above as to the insanity of a person, adjourn the case in order that investigation of his mental condition may be carried out.
- (4) The court which made a temporary hospital 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 insane 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.
- (6) Where evidence is brought before the court that the accused was insane at the time of doing the act or making the omission constituting the offence with which he is charged and he is acquitted, the court shall—
- (a) in proceedings on indictment, direct the jury to find; or
 - (b) in summary proceedings, state,
- whether the accused was insane at such time as aforesaid, and, if so, to declare whether he was acquitted on account of his insanity at that time.

- (7) It shall not be competent for a person charged summarily in the sheriff court to found on a plea of insanity standing in bar of trial unless, before the first witness for the prosecution is sworn, he gives notice to the prosecutor of the plea and of the witnesses by whom he proposes to maintain it; and where such notice is given, the court shall, if the prosecutor so moves, adjourn the case.
- (8) 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.

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—
- (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 insane at the time of doing the act or making the omission constituting the offence, the court shall state whether the acquittal is on the ground of such insanity.
- (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.

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, 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 shall be a valid citation to the examination of facts.
- (2) Where an examination of facts is ordered in connection with proceedings on indictment, a warrant for citation of an accused and witnesses under section 66(1) of this Act shall be sufficient warrant for citation to an examination of facts.
- (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.

*Disposal in case of insanity***57 Disposal of case where accused found to be insane**

- (1) This section applies where—
 - (a) a person is, by virtue of section 54(6) or 55(3) of this Act, acquitted on the ground of his insanity at the time of the act or omission; 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) make an order (which shall have the same effect as a hospital order) that the person be detained in such hospital as the court may specify;
 - (b) in addition to making an order under paragraph (a) above, make an order (which shall have the same effect as a restriction order) that the person shall, without limit of time, be subject to the special restrictions set out in section 62(1) of the Mental Health (Scotland) Act 1984;
 - (c) make an order (which shall have the same effect as a guardianship order) placing the person under the guardianship of a local authority or of a person approved by a local authority;
 - (d) make a supervision and treatment order (within the meaning of paragraph 1(1) of Schedule 4 to this Act); or
 - (e) make no order.
- (3) Where the offence with which the person was charged is murder, the court shall make orders under both paragraphs (a) and (b) of subsection (2) above in respect of that person.
- (4) Sections 58(1), (2) and (4) to (7) and 59 and 61 of this Act shall have effect in relation to the making, terms and effect of an order under paragraph (a), (b) or (c) of subsection (2) above as those provisions have effect in relation to the making, terms and effect of, respectively, a hospital order, a restriction order and a guardianship order as respects a person convicted of an offence, other than an offence the sentence for which is fixed by law, punishable by imprisonment.
- (5) Schedule 4 to this Act shall have effect as regards supervision and treatment orders.

Hospital orders and guardianship

58 Order for hospital admission or guardianship

- (1) Where a person is convicted in the High Court or the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment, and the following conditions are satisfied, that is to say—
- (a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with section 61 of this Act) that the grounds set out in—
 - (i) section 17(1); or, as the case may be
 - (ii) section 36(a),of the Mental Health (Scotland) Act 1984 apply in relation to the offender;
 - (b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section,
- subject to subsection (2) below, the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of such local authority or of such other person approved by a local authority as may be so specified.
- (2) Where the case is remitted by the sheriff to the High Court for sentence under any enactment, the power to make an order under subsection (1) above shall be exercisable by that court.

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

- (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 subsection (1) above, then, if it is satisfied that the person did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.
- (4) An order for the admission of a person to a hospital (in this Act, referred to as “a hospital order”) shall not be made under this section in respect of an offender or of a person to whom subsection (3) above applies unless the court is satisfied that that hospital, in the event of such an order being made by the court, is available for his admission thereto within 28 days of the making of such an order.
- (5) A State hospital shall not be specified in a hospital order in respect of the detention of a person unless the court is satisfied, on the evidence of the medical practitioners which is taken into account under paragraph (a) of subsection (1) above, that the offender, on account of his dangerous, violent or criminal propensities, requires treatment under conditions of special security, and cannot suitably be cared for in a hospital other than a State hospital.
- (6) An order placing a person under the guardianship of a local authority or of any other person (in this Act referred to as “a guardianship order”) shall not be made under this section unless the court is satisfied—
 - (a) after taking into consideration the evidence of a mental health officer, that it is necessary in the interests of the welfare of the person that he should be placed under guardianship; and
 - (b) that that authority or person is willing to receive that person into guardianship.
- (7) A hospital order or guardianship order shall specify the form of mental disorder, being mental illness or mental handicap or both, from which, upon the evidence taken into account under paragraph (a) of subsection (1) above, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners, whose evidence is taken into account as aforesaid, as suffering from the same form of mental disorder, whether or not he is also described by either of them as suffering from the other form.
- (8) Where an order is made under this section, the court shall not pass sentence of imprisonment or impose a fine or make a probation order or a community service order in respect of the offence, but may make any other order which the court has power to make apart from this section; and for the purposes of this subsection “sentence of imprisonment” includes any sentence or order for detention.
- (9) The court by which a hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in subsection (4) above; but a direction for the conveyance of a patient to a residential establishment shall not be given unless the court is satisfied that the authority is willing to receive the patient therein.
- (10) Where a person is charged before the district court with an act or omission constituting an offence punishable with imprisonment, the district court, if it appears to it that that person may be suffering from mental disorder, shall remit him to the sheriff court in the manner provided by section 7(9) and (10) of this Act, and the sheriff court shall, on any such remit being made, have the like power to make an order under subsection (1) above in respect of him as if he had been charged before that court with the said act

or omission as an offence, or in dealing with him may exercise the like powers as the district court.

59 Hospital orders: restrictions on discharge

- (1) Where a hospital order is made in respect of a person, and it appears to the court—
- (a) having regard to the nature of the offence with which he is charged;
 - (b) the antecedents of the person; and
 - (c) 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 section 62(1) of the Mental Health (Scotland) Act 1984, 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 medical practitioner approved by the Health Board for the purposes of section 20 or section 39 of the Mental Health (Scotland) Act 1984, whose evidence is taken into account by the court under section 58(1)(a) of this Act, has given evidence orally before the court.
- (3) Where a restriction order is in force in respect of a patient, a guardianship order shall not be made in respect of him; and where the hospital order relating to him ceases to have effect by virtue of section 60(3) of the Mental Health (Scotland) Act 1984 on the making of another hospital order, that order shall have the same effect in relation to the restriction order as the previous hospital order, but without prejudice to the power of the court making that other hospital order to make another restriction order to have effect on the expiration of the previous such order.

60 Appeals against hospital orders

Where a hospital order, interim hospital order (but not a renewal thereof), guardianship order or a restriction order 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 hospital order has been made, to any right of appeal against any other order or sentence which may be imposed), appeal against that order in the same manner as against sentence.

Medical evidence

61 Requirements as to medical evidence

- (1) Of the medical practitioners whose evidence is taken into account under sections 53(1), 54(1) and 58(1)(a) of this Act, at least one shall be a practitioner approved for the purposes of section 20 or section 39 of the Mental Health (Scotland) Act 1984 by a Health Board as having special experience in the diagnosis or treatment of mental disorder.
- (2) Written or oral evidence given for the purposes of the said section 58(1)(a) 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.

- (3) For the purposes of the said sections 54(1) and 58(1)(a) 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 the said section 54(1), remanded in custody for his examination by any medical practitioner, and any such examination may be made in private.

Appeals under Part VI

62 Appeal by accused in case involving insanity

- (1) A person may appeal to the High Court against—
- (a) a finding made under section 54(1) of this Act that he is insane so that his trial cannot proceed or continue, or the refusal of the court to make such a finding;
 - (b) a finding under section 55(2) of this Act; or
 - (c) an order made under section 57(2) of this Act.
- (2) An appeal under subsection (1) above shall be—
- (a) in writing; and
 - (b) lodged—
 - (i) 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;
 - (ii) 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;
 - (iii) in the case of an appeal under paragraph (c) of that subsection against an order made on an acquittal, by virtue of section 54(6) or 55(3) of this Act, on the ground of insanity at the time of the act or omission, not later than 14 days after the date of the acquittal;

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- (iv) 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.
- (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 or order 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.

63 Appeal by prosecutor in case involving insanity

- (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 insane so that his trial cannot proceed or continue;
 - (b) an acquittal on the ground of insanity at the time of the act or omission by virtue of subsection (6) of that section;
 - (c) an acquittal under section 55(3) of this Act (whether or not on the ground of insanity at the time of the act or omission); or
 - (d) any order made under section 57(2) of this Act.
- (2) An appeal under subsection (1) above shall be—
 - (a) in writing; and
 - (b) lodged—
 - (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) or (d) 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.

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- (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 or order which that court could have made at the time when it made the finding or order 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.