



Criminal Procedure (Scotland) Act 1995

1995 CHAPTER 46

PART VI

MENTAL DISORDER

Hospital orders and guardianship

58 Order for hospital admission or guardianship.

[^{F1}(1) ^{F2}.....]

(1A) Where a person is convicted [^{F3}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 [^{F4}subsection ^{F5}. . . (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 [^{F4}subsection ^{F5}. . . (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.

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- (4) ^{F6}
- (5) ^{F6}

[^{F7}(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 [^{F8}person's personal welfare which makes the same provision as the guardianship order which the court proposes to make under this section] .]

(7) A ^{F9} . . . guardianship order [^{F10}made under this section] shall specify [^{F11} (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 the [^{F12}person] has] ; and no such order shall be made unless [^{F13}the descriptions of the [^{F12}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 [^{F14}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) ^{F15}
- (10) ^{F15}

[^{F16}(11) Section 58A of this Act shall have effect as regards guardianship orders made under ^{F17} . . . this section.]

Textual Amendments	
F1	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
F2	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
F3	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

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- F4** 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**
- F5** 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
- F6** 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
- F7** 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**
- F8** 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
- F9** 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
- F10** 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
- F11** 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
- F12** 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
- F13** 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
- F14** 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)
- F15** 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
- F16** 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**
- F17** 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)

- C1** 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)

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