



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)

[^{F18}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 [^{F19}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;

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- (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.
- (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

F18 S. 58A inserted (1.4.2002) by 2000 asp 4, s. 84(2); S.S.I. 2001/81, art. 3, Sch. 2

F19 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 [^{F20}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—
- (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,

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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 [F21Part 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 [F22approved medical practitioner] , whose evidence is taken into account by the court under [F23section 57A(2)(a)] of this Act, has given evidence orally before the court.

[F24(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) F25

Textual Amendments

- F20** 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**
- F21** 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**
- F22** 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**
- F23** 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**
- F24** 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**
- F25** 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}

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