



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PART I

#### SOLEMN PROCEDURE

#### PROCEDURE PRIOR TO TRIAL

#### *Procedure at trial of persons suffering from mental disorder*

#### **174 Insanity in bar of trial or as the ground of acquittal**

- (1) Where any person charged on indictment with the commission of an offence is found insane so that the trial of that person upon the indictment cannot proceed, or if in the course of the trial of any person so indicted it appears to the jury that he is insane, the court shall direct a finding to that effect to be recorded.
- (2) Where in the case of any person charged as aforesaid evidence is brought before the court that that person was insane at the time of doing the act or making the omission constituting the offence with which he is charged and the person is acquitted, the court shall direct the jury to find whether the person was insane at such time as aforesaid, and to declare whether the person was acquitted by them on account of his insanity at that time.
- (3) Where the court has directed that a finding be recorded in pursuance of subsection (1) of this section, or where a jury has declared that a person has been acquitted by them on the ground of his insanity in pursuance of the last foregoing subsection, the court shall order that the person to whom that finding or that acquittal relates shall be detained in a State hospital or such other hospital as for special reasons the court may specify.
- (4) An order for the detention of a person in a hospital under this section shall have the like effect as a hospital order (within the meaning of section 175(3) of this Act) together with an order restricting his discharge, made without limitation of time; and where such an order is given in respect of a person while he is in the hospital, he shall be deemed to be admitted in pursuance of, and on the date of, the order.

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- (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.

## **175 Power of court to order 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 the provisions of section 176 of this Act) that the offender is suffering from mental disorder of a nature or degree which, in the case of a person under 21 years of age, would warrant his admission to a hospital or his reception into guardianship under Part IV of the Mental Health (Scotland) Act 1960, and
- (b) the court is of 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,

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:

Provided that, where his case is remitted by the sheriff to the High Court for sentence under any enactment, the power to make an order under this subsection shall be exercisable by that court.

- (2) 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 such prosecutor to bring before the court such evidence as may be available of the mental condition of that person.
- (3) 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 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.
- (4) 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) of this section, 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.
- (5) 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 that that authority or person is willing to receive that person into guardianship.

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- (6) A hospital order or guardianship order shall specify the form of mental disorder, being mental illness or mental deficiency or both, from which, upon the evidence taken into account under paragraph (a) of subsection (1) of this section, 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.
- (7) 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 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.

## **176 Requirements as to medical evidence**

- (1) Of the medical practitioners whose evidence is taken into account under section 175(1) (a) of this Act, at least one shall be a practitioner approved for the purposes of section 27 of the Mental Health (Scotland) Act 1960 by a Health Board as having special experience in the diagnosis or treatment of mental disorder.
- (2) For the purposes of the said section 175(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.
- (3) 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 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.
- (4) 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 for his examination by any medical practitioner, and any such examination may be made in private.

## **177 Supplementary provisions as to hospital orders**

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 section 175(3) of this Act; but a direction for the conveyance of a patient to a residential establishment

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provided by a local authority under Part IV of the Social Work (Scotland) Act 1968 shall not be given unless the court is satisfied that that authority is willing to receive the patient therein.

### **178 Power of court to restrict discharge from hospital**

- (1) Where a hospital order 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 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 60(3) of the Mental Health (Scotland) Act 1960, either without limit of time or during such period as may be specified in the order.
- (2) An order under this section (in this Act referred to as " an order restricting discharge ") shall not be made in the case of any person unless the medical practitioner approved by the Health Board for the purposes of section 27 of the Mental Health (Scotland) Act 1960, whose evidence is taken into account by the court under section 175(1)(a) of this Act, has given evidence orally before the court.
- (3) Where an order restricting the discharge of a patient is in force, 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 58(4) of the Mental Health (Scotland) Act 1960 on the making of another hospital order, that order shall have the same effect in relation to the order restricting discharge as the previous hospital order, but without prejudice to the power of the court making that other hospital order to make another order restricting discharge to have effect on the expiration of the previous such order.