



Criminal Justice (Scotland) Act 1949

1949 CHAPTER 94

PART I

POWERS AND PROCEEDINGS OF COURTS

Orders for the detention of persons who are of unsound mind or mentally defective

23 Power to order the detention of persons of unsound mind

- (1) Where it appears to the prosecutor in any court of summary jurisdiction before which a person is charged with an offence that the person is of unsound mind, it shall be the duty of such prosecutor to bring before the court such evidence as may be available of the mental condition of such person.
- (2) Where a person is charged summarily in the sheriff court with any act or omission constituting an offence punishable with imprisonment, and the court is satisfied that the person did the act or made the omission charged, and is satisfied on the evidence of two registered medical practitioners that the person is of unsound mind and is also satisfied that he is a proper person to be detained, the court shall—
 - (a) order that he be removed to and received and detained in such mental hospital as may be named in the order; or,
 - (b) if the court is satisfied on the evidence of two registered medical practitioners approved for the purpose by the General Board of Control for Scotland that the person by reason of his mental illness is in a state threatening danger to the lieges or offensive to public decency and cannot suitably be cared for in a mental hospital, order that he be removed to and received and detained in such State Mental Hospital as may be named in the order.
- (3) Where a sheriff is satisfied on the evidence of two registered medical practitioners approved for the purpose by the General Board of Control for Scotland that a person detained under an order made under paragraph (a) of the last foregoing subsection is in a state threatening danger to the lieges or offensive to public decency and cannot be suitably cared for in a mental hospital, the sheriff shall make an order that he be

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removed to and received and detained in such State Mental Hospital as may be named in the order, and the first-mentioned order shall cease to have effect.

- (4) An order made under paragraph (a) of subsection (2) of this section shall be of the like force and effect as an order made under section fourteen of the Lunacy (Scotland) Act, 1862, and an order made under paragraph (b) of the said subsection or under the last foregoing subsection shall be of the like force and effect as if it were an order made under section fifteen of that Act and as if any reference in that section to a mental hospital included a reference to a State Mental Hospital.
- (5) Where a person is charged before a court of summary jurisdiction other than a sheriff court with any act or omission constituting an offence punishable with imprisonment, the court, if it appears to it that such person may be of unsound mind, shall remit him to the sheriff court in the manner provided by section nine of the Summary Jurisdiction (Scotland) Act, 1908, and the sheriff court shall, on any such remit being made, have the like power with regard to such person as if he had been charged before that court with the said act or omission.
- (6) The court by which an order is made under this section shall send to the mental hospital or, as the case may be, the State Mental Hospital named in the order such information in the possession of the court as it considers likely to be of assistance in dealing with the person to whom the order relates.
- (7) The foregoing provisions of this section shall, until the day appointed for the coming into force of section sixty-three of this Act, have effect with the substitution for any reference to a State Mental Hospital of a reference to the lunatic department of Perth Prison.

24 Power to order the detention of mental defectives

- (1) Where it appears to the prosecutor in any court before which a person is charged with an offence that the person is a defective within the meaning of the Mental Deficiency (Scotland) Acts, 1913 and 1940, it shall be the duty of such prosecutor to bring before the court such evidence as may be available of the mental condition of such accused person.
- (2) Where a person is convicted in the High Court of Justiciary or the sheriff court of any offence and the court is satisfied on the evidence of two registered medical practitioners one of whom shall be a medical practitioner approved for the purpose by the General Board of Control for Scotland that the person is a defective within the meaning of the Mental Deficiency (Scotland) Acts, 1913 and 1940, the court may (in lieu of dealing with him in any other manner) order that he be removed to and received and detained in such institution for mental defectives as may be named in the order or that he be placed under guardianship.
- (3) Where a person is charged before a court of summary jurisdiction, other than a sheriff court, with any offence, the court, if it appears to it that such person may be a defective within the meaning of the Mental Deficiency (Scotland) Acts, 1913 and 1940, shall remit him to the sheriff court in the manner provided by section nine of the Summary Jurisdiction (Scotland) Act, 1908, and the sheriff court shall, on any such remit being made, have the like power with regard to such person as if he had been charged before that court with the said offence.

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- (4) The court by which an order is made under this section shall send to the institution named in the order such information in the possession of the court as it considers likely to be of assistance in dealing with the person to whom the order relates.
- (5) An order made under this section shall be of the like force and effect as a judicial order under the Mental Deficiency (Scotland) Acts, 1913 and 1940.
- (6) Section nine of the Mental Deficiency and Lunacy (Scotland) Act, 1913 shall, in so far as it relates to persons charged with offences, cease to have effect.

25 Change in procedure in the case of mental defectives undergoing imprisonment, etc.

The following section shall be substituted for section ten of the Mental Deficiency and Lunacy (Scotland) Act, 1913:—

Where a sheriff on an application by the Secretary of State is satisfied on the evidence of two registered medical practitioners, one of whom shall be a medical practitioner approved for the purpose by the General Board of Control for Scotland, that a person who is detained (otherwise than while awaiting trial or sentence or under civil process) in a prison or other institution to which the Prisons (Scotland) Acts, 1860 to 1926, apply, or in a remand home, or in a school approved under section eighty-three of the Children and Young Persons (Scotland) Act, 1937, or in an inebriate reformatory, or who is detained in a State Mental Hospital, is a defective, the sheriff may make an order—

- (a) that he be transferred therefrom and sent to such institution for defectives as may be named in the order; or
- (b) that he be placed under guardianship;

and any order so made shall have the like effect as a judicial order under this Act.”