



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

PART II

SUMMARY PROCEDURE

CONVICTION AND SENTENCE

Residential and Borstal Training

[413] ^{F1} Detention of children.

- (1) Where a child appears before the sheriff in summary proceedings and pleads guilty to, or is found guilty of, an offence to which this section applies, the sheriff may order that he be detained in residential care by the appropriate local authority [^{F2}for such period not exceeding one year as may be specified in the order]]. . .in such place (in any part of the United Kingdom) as the local authority may, from time to time, consider appropriate ^{F3} . . .
- (2) This section applies to any offence in respect of which it is competent to impose imprisonment on a person of the age of 21 years or more.
- (3) In this section—
 - “the appropriate local authority” means—
 - (a) where the child usually resides in Scotland, the regional or islands council for the area in which he usually resides;
 - (b) in any other case, the regional or islands council for the area in which the offence was committed;“care” shall be construed in accordance with section 32(3) of the 1968 Act, and the provisions of that Act specified in section 44(5) of that Act shall apply in respect of a child who is detained in residential care in pursuance of this section as they apply in respect of a child who is subject to a supervision requirement;
 - “the 1968 Act” means the ^{M1}Social Work (Scotland) Act 1968.

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- (4) Where a child in respect of whom an order is made under this section is also subject to a supervision requirement within the meaning of the 1968 Act, subject to subsection (6) below, the supervision requirement shall be of no effect during any period for which he is required to be detained under the order.
- (5) The Secretary of State may, by regulations made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make such provision as he considers necessary as regards the detention in secure accommodation (within the meaning of the 1968 Act) of children in respect of whom orders have been made under this section.
- [^{F4}(6) Where a child is detained in residential care in pursuance of an order under—
- (a) subsection (1) above, he shall be released from such detention not later than the date by which half the period specified in the order has (following commencement of the detention) elapsed but, without prejudice to subsection (6A) below, until the entire such period has so elapsed may be required by the local authority to submit to supervision in accordance with such conditions as they consider appropriate;
 - (b) subsection (1) above or (6B) below, the local authority may at any time review his case and may, in consequence of such review and after having regard to the best interests of the child and the need to protect members of the public, release the child—
 - (i) for such period and on such conditions as the local authority consider appropriate; or
 - (ii) unconditionally.
- (6A) Where a child released under paragraph (a) or (b)(ii) of subsection (6) above is subject to a supervision requirement within the meaning of the 1968 Act, the effect of that requirement shall commence, or as the case may be resume, upon such release.
- (6B) If, while released under paragraph (a) or (b) of subsection (6) above (and before the date on which the entire period mentioned in the said paragraph (a) has, following commencement of the detention, elapsed), a child commits an offence to which this section applies and (whether before or after that date) pleads guilty to or is found guilty of it a court may, instead of or in addition to making any other order in respect of that plea or finding, order that he be returned to the residential care of the authority which released him and that his detention in their care shall continue for the whole or any part of the period which—
- (a) begins with the date of the order for his return; and
 - (b) is equal in length to the period between the date on which the new offence was committed and the date on which that entire period elapses.
- (6C) An order under subsection (6B) above for return to residential care—
- (a) shall be taken to be an order for detention in residential care for the purposes of this Act and of any appeal; and
 - (b) shall, as the court making that order may direct, either be for a period of residential care before and to be followed by, or to be concurrent with, any period of residential care to be imposed in respect of the new offence (being in either case disregarded in determining the appropriate length of the period so imposed).]

(7) Where a local authority consider it appropriate that a child in respect of whom an order has been made under subsection (1) [^{F5}(or (6B))]above should be detained in a place in

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any part of the United Kingdom outside Scotland, the order shall be a like authority as in Scotland to the person in charge of the place to restrict the child's liberty to such an extent as that person may consider appropriate having regard to the terms of the order.

Textual Amendments

- F1** S. 413 substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 47(4)(a)**, 59(1)
- F2** Words in s. 413(1) inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 141\(a\)](#); S.I. 1996/517, arts. 3-6, **Sch.**
- F3** Words in s. 413(1) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117, Sch. 6 Pt. I para. 141\(b\)](#), **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3-6, **Sch.**
- F4** S. 413(6)(6A)-(6C) substituted (1.10.1993) for s. 413(6) by [1993 c. 9, ss. 5, 6, 8, 10](#) (with [ss. 5\(1\), 6\(1\), 10, 27, 47\(2\)](#), [Sch. 6 paras. 1, 2, 6, 7](#)); S.I. 1993/2050, **art. 3(4)**
- F5** Words in s. 413(7) inserted (1.10.1993) by [1993 c. 9, s. 47\(1\)](#), **Sch. 5 para. 1(32)(b)** (with [s. 47\(2\)](#), [Sch. 6 paras. 1, 2](#)); S.I. 1993/2050, **arts. 3(4), 4(1)(c)**

Marginal Citations

- M1** [1968 c.49 \(81:3\)](#).

414 ^{F6}

Textual Amendments

- F6** S. 414 repealed by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), s. 45(3), [Sch. 6 para. 5](#), **Sch. 8** and [S.I. 1983/1580, art. 3](#)

[^{F7}415 **Detention of young offenders.**

- (1) It shall not be competent to impose imprisonment on a person under 21 years of age.
- (2) Subject to subsections (3) and (4) below a court may impose detention (whether by way of sentence or otherwise) on a person, who is not less than 16 but under 21 years of age, where but for subsection (1) above the court would have power to impose a period of imprisonment; and the period of detention imposed under this section on any person shall not exceed the maximum period of imprisonment which might otherwise have been imposed.
- (3) The court shall not under subsection (2) above impose detention on a person unless it is of the opinion that no other method of dealing with him is appropriate; and the court shall state its reasons for that opinion, and, except in the case of the High Court, those reasons shall be entered in the record of proceedings.
- (4) To enable the court to form an opinion under subsection (3) above, it shall obtain (from an officer of a local authority or otherwise) such information as it can about the offender's circumstances; and it shall also take into account any information before it concerning the offender's character and physical and mental condition.

[A sentence of detention imposed under this section shall be a sentence of detention ^{F8}(5) in a young offenders institution.]

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^{F9}(11)]

Textual Amendments

F7 S. 415 substituted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), ss. 45(1), **Sch. 6 para. 5** and S.I. 1983/1580, **art. 3**

F8 S. 415(5) substituted for s. 415(5)–(10) by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 124(1), **Sch. 8 para. 16**

F9 S. 415(11) repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt.I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

Modifications etc. (not altering text)

C1 S. 415 extended by Contempt of Court Act 1981 (c. 49, SIF 39:3), **s. 15(3)**

C2 S. 415 excluded by Repatriation of Prisoners Act 1984 (c. 47, SIF 39:1), s. 3, **Sch. para. 4(2)(b)**

416 ^{F10}

Textual Amendments

F10 S. 416 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 8** and S.I. 1983/1580, **art. 3**

417 ^{F11}

Textual Amendments

F11 S. 417 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), **Sch. 8**

418 ^{F12}

Textual Amendments

F12 S. 418 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 45(3), Sch. 6 para. 5, **Sch. 8** and S.I. 1983/1580, **art. 3**

419, ^{F13}
420.

Textual Amendments

F13 Ss. 419, 420 repealed by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), Sch. 6 para. 5, **Sch. 8** and S.I. 1983/1580, **art. 3**

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^{F14}**421**

Textual Amendments

F14 S. 421 repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt.I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

422 ^{F15}

Textual Amendments

F15 S. 422 repealed by Prisons (Scotland) Act 1989 (c. 45, SIF 39:1), s. 45(2), **Sch. 3**

^{F16}**423**

Textual Amendments

F16 S. 423 repealed (1.10.1993) by 1993 c. 9, s. 47(3), **Sch. 7 Pt.I** (with s. 47(2), Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**

424 Detention in precincts of court.

Where a court of summary jurisdiction has power to impose imprisonment [^{F17}or detention] on an offender it may, in lieu of so doing, order that the offender be detained within the precincts of the court or at any police station, till such hour, not later than eight in the evening on the day on which he is convicted, as the court may direct:

Provided that before making an order under this section a court shall take into consideration the distance between the proposed place of detention and the offender's residence (if known to, or ascertainable by, the court), and shall not make any such order under this section as would deprive the offender of a reasonable opportunity of returning to his residence on the day on which the order is made.

Textual Amendments

F17 Words inserted by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 84(2), **Sch. 7 para. 68** and S.I. 1983/1580, **art. 3**

425 No imprisonment for less than five days.

- (1) No person shall be sentenced to imprisonment by a court of summary jurisdiction for a period of less than five days.
- (2) Where a court of summary jurisdiction has power to impose imprisonment on an offender, it may, if any suitable place provided and certified as hereinafter mentioned is available for the purpose, sentence the offender to be detained therein, for such period not exceeding four days as the court thinks fit, and an extract of the finding

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and sentence shall be delivered with the offender to the person in charge of the place where the offender is to be detained and shall be a sufficient authority for his detention in that place in accordance with the sentence.

- (3) The expenses of the maintenance of offenders detained under this section shall be defrayed in like manner as the expenses of the maintenance of prisoners under the ^{M2}Prisons (Scotland) Act 1952.
- (4) The Secretary of State may, on the application of any police authority, certify any police cells or other similar places provided by the authority to be suitable places for the detention of persons sentenced to detention under this section, and may by statutory instrument make regulations for the inspection of places so provided, the treatment of persons detained therein and generally for carrying this section into effect.
- (5) No place certified under this section shall be used for the detention of females unless provision is made for their supervision by female officers.
- (6) In this section the expression “police authority” means a regional or islands council, except that where there is an amalgamation scheme under the ^{M3}Police (Scotland) Act 1967 in force it means a joint police committee.
- (7) Until 16th May 1975 the last foregoing subsection shall have effect as if, for the words “regional or islands council”, there were substituted the words “council of a county or of a burgh which maintains a separate police force”.

Marginal Citations

- M2** 1952 c. 61(39:1).
M3 1967 c. 77(95).

[^{F18}426 Legal custody.

Any person required or authorised by or under this Act or [^{F19}any other enactment or any subordinate instrument] to be taken to any place, or to be detained or kept in custody shall, while being so taken or detained or kept, be deemed to be in legal custody.]

Textual Amendments

- F18** S. 426 substituted by [Criminal Justice \(Scotland\) Act 1980 \(c. 62, SIF 39:1\)](#), **Sch. 7 para. 69**
F19 Words substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(1), **Sch. 1 para. 12**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act certain function transferred. by [1994 c. 39 s. 127\(1\)128](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 168(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(6\)\(b\)](#)
- s. 364(c)(ii) amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(14\)\(b\)](#)
- s. 413(3) (defn.of "the appropriate local authority") para. (a)(b) amended by [1994 c. 39 Sch. 13 para. 97\(5\)](#)
- s. 413(3) (defns. of "care" and "the 1968 Act") repealed (prosp.) by [1995 c. 36 s. 105\(4\)\(5\)Sch. 4 para. 24\(17\)\(b\)\(i\)Sch. 5](#)
- s. 462 (defns. of "child" "children's hearing" "place of safety" "residential establishment" and "supervision requirement") amended (prosp.) by [1995 c. 36 s. 105\(4\)Sch. 4 para. 24\(18\)](#)
- s. 462 (defns. of "crime" and "prosecutor") applied (prosp.) by [1995 c. 36 s. 53\(7\)](#)