



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PART II

#### SUMMARY PROCEDURE

##### *Procedure at Trial of Persons suffering from Mental Disorder*

#### **375 Insanity in bar of trial**

- (1) Subject to the following provisions of this section, any rule of law relating to insanity standing in bar of trial shall apply in the case of a person charged summarily in the sheriff court as it would apply if that person were charged on indictment.
- (2) Where, in the case of any person charged summarily in the sheriff court, the court is satisfied that the person is insane so that the trial of that person cannot proceed, the court shall direct a finding to that effect, and the reasons for that finding, to be recorded, and shall deal with him in the manner provided by section 376(2) of this Act.
- (3) It shall not be competent for a person charged as aforesaid to found on a plea of insanity standing in bar of trial unless, before the first witness for the prosecution is called, he gives notice to the prosecutor of the plea and of the witnesses by whom he proposes to maintain it; and where notice as aforesaid has been given, the court shall, if the prosecutor so moves, adjourn the case.
- (4) 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.

#### **376 Power of court to order hospital admission or guardianship**

- (1) Where a person is convicted in 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—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) the court is satisfied, on the written or oral evidence of two medical practitioners (complying with the provisions of section 377 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.

- (2) Where a person is charged summarily in the sheriff court with an act or omission as an offence and a finding has been recorded in respect of that person under section 375(2) of this Act, the court shall make such an order for his admission to and detention in a hospital as may be made under the foregoing subsection.
- (3) Where in the case of a person charged as aforesaid the court would have power, on convicting him, to make an order under subsection (1) of this section, 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.
- (4) 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 that person may be suffering from mental disorder, shall remit him to the sheriff court in the manner provided by section 286 of this Act, and the sheriff court shall, on any such remit being made, have the like power to make an order under subsection (1) of this section in respect of him as if he had been charged before that court with the said act or omission as an offence, or in dealing with him may exercise the like powers as the court making the remit.
- (5) 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.
- (6) 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 or of a person to whom subsection (3) of this section applies 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.
- (7) 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.
- (8) 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.

- (9) 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.
- (10) 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.

### **377 Requirements as to medical evidence**

- (1) Of the medical practitioners whose evidence is taken into account under section 376(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 376(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.

### **378 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

---

*Status: This is the original version (as it was originally enacted).*

---

admission to the hospital within the period of 28 days referred to in section 376(6) of this Act; but a direction for the conveyance of a patient to a residential establishment 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.

### **379 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 376(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.