



# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PART II

#### SUMMARY PROCEDURE

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

#### **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—
- (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 [F<sup>1</sup>the grounds set out in section [F<sup>2</sup>17(1)] or, as the case may be, the ground set out in section [F<sup>2</sup>36(a)] of the [F<sup>2MI</sup>Mental Health (Scotland) Act 1984] apply in relation to the offender]; 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.

F<sup>3</sup>(2) .....

- (3) Where in the case of a person charged [F<sup>4</sup>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 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.

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*Changes to legislation: Criminal Procedure (Scotland) Act 1975, Section 376 is up to date with all changes known to be in force on or before 24 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (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
- [<sup>F5</sup>(a) after taking into consideration the evidence of a mental health officer, that it is necessary in the interests of the welfare of the person that he should be placed under guardianship; and
- (b)]
- 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 [<sup>F6</sup>handicap], 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 [<sup>F7</sup>or a community service 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.

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### Textual Amendments

- F1** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), [Sch. 2 para. 34\(a\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), [s. 126\(2\)\(b\)](#)
- F2** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), s. 127(1), [Sch. 3 para. 33](#)
- F3** [S. 376\(2\)](#) 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. 133\(a\)](#), [Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)
- F4** Words in [s. 376\(3\)](#) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, s. 117\(1\)](#), [Sch. 6 Pt. I para. 133\(b\)](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)
- F5** Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), [Sch. 2 para. 34\(b\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), [s. 126\(2\)\(b\)](#)
- F6** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), [Sch. 2 para. 34\(b\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), [s. 126\(2\)\(b\)](#)
- F7** Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\)](#), [Sch. 2 para. 34\(d\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), [s. 126\(2\)\(b\)](#)
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### Modifications etc. (not altering text)

- C1** [S. 376](#) extended by [Contempt of Court Act 1981 \(c. 49, SIF 39:3\)](#), [s. 15\(3\)](#)
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### Marginal Citations

- M1** [1984 c. 36\(85\)](#).

**Changes to legislation:**

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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\(7\)](#)