



Criminal Procedure (Scotland) Act 1975

1975 CHAPTER 21

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.

[^{F1}(1) Where the court is satisfied, on the written or oral evidence of two medical practitioners, that a person charged on indictment with the commission of an offence is insane so that his trial cannot proceed or, if it has commenced, cannot continue, the court shall, subject to subsection (1A) below—

- (a) make a finding to that effect and state the reasons for that finding;
- (b) discharge the trial diet and order that a diet (in this Act referred to as an “an examination of facts”) be held under section 174ZA of this Act; and
- (c) remand the person in custody or on bail or, where the court is satisfied—
 - (i) on the written or oral evidence of two medical practitioners, that he is suffering from mental disorder of a nature or degree which warrants his admission to hospital under Part V of the Mental Health (Scotland) Act 1984; and
 - (ii) that a hospital is available for his admission and suitable for his detention,

make an order (in this section referred to as a “temporary hospital order”) committing him to that hospital until the conclusion of the examination of facts.

(1A) Subsection (1) above is without prejudice to the power of the court, on an application by the prosecutor, to desert the diet pro loco et tempore.

(1B) The court may, before making a finding under subsection (1) above as to the insanity of a person, adjourn the case in order that investigation of his mental condition may be carried out.

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- (1C) The court which made a temporary hospital order may, at any time while the order is in force, review the order on the ground that there has been a change of circumstances since the order was made and, on such review—
- (a) where the court considers that such an order is no longer required in relation to a person, it shall revoke the order and may remand him in custody or on bail;
 - (b) in any other case, the court may—
 - (i) confirm or vary the order; or
 - (ii) revoke the order and make such other order, under subsection (1)(c) above or any other provision of this Part of this Act, as the court considers appropriate.]
- (2) Where in the case of any person charged [^{F2}on indictment with the commission of the offence]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 [^{F3}, if so,]to declare whether the person was acquitted by them on account of his insanity at that time.
- ^{F4}(3)
- ^{F4}(4)
- (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.

Textual Amendments

- F1** S. 174(1)(1A)-(1C) substituted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) for s. 174(1) by 1995 c. 20, s. 47(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F2** Words in s. 174(2) 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. 65(a)(i)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F3** Words in s. 174(2) inserted (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. 65(a)(ii)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**
- F4** S. 174(3)(4) 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. 65(b)**, **Sch. 7 Pt. I**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[^{F5}174Z] Examination of facts.

- (1) At an examination of facts ordered under section 174(1)(b) of this Act the court shall, on the basis of the evidence (if any) already given in the trial and such evidence, or further evidence, as may be led by either party, determine whether it is satisfied—
- (a) beyond reasonable doubt, as respects any charge on indictment in respect of which the accused was being or was to be tried, that he did the act or made the omission constituting the offence; and
 - (b) on the balance of probabilities, that there are no grounds for acquitting him.
- (2) Where the court is satisfied as mentioned in subsection (1) above, it shall make a finding to that effect.

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- (3) Where the court is not so satisfied it shall, subject to subsection (4) below, acquit the person of the charge.
- (4) Where, as respects a person acquitted under subsection (3) above, the court is satisfied as to the matter mentioned in subsection (1)(a) above but it appears to the court that the person was insane at the time of doing the act or making the omission constituting the offence, the court shall state whether the acquittal is on the ground of such insanity.
- (5) Where it appears to the court that it is not practicable or appropriate for the accused to attend an examination of facts the court may, if no objection is taken by or on behalf of the accused, order that the examination of facts shall proceed in his absence.
- (6) Subject to the provisions of this section, section 174ZB of this Act and any Act of Adjournal, the rules of evidence and procedure and the powers of the court shall, in respect of an examination of facts, be as nearly as possible those applicable in respect of a trial.
- (7) For the purposes of the application to an examination of facts of the rules and powers mentioned in subsection (6) above, an examination of facts—
 - (a) commences when the indictment is called; and
 - (b) concludes when the court—
 - (i) acquits the person under subsection (3) above;
 - (ii) makes an order under subsection (2) of section 174ZC of this Act; or
 - (iii) decides, under paragraph (e) of that subsection, not to make an order.]

Textual Amendments

- F5** S. 174ZA inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 49(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[^{F6}174ZE] Examination of facts: supplementary provisions.

- (1) An examination of facts ordered under section 174(1)(b) of this Act may, where the order is made at the trial diet, be held immediately following the making of the order and, where it is so held, the citation of the accused and any witness to the trial diet shall be a valid citation to the examination of facts.
- (2) A warrant for citation of an accused and witnesses under section 69 of this Act shall be sufficient warrant for citation to an examination of facts.
- (3) Where an accused person is not legally represented at an examination of facts the court shall appoint counsel or a solicitor to represent his interests.
- (4) The court may, on the motion of the prosecutor and after hearing the accused, order that the examination of facts shall proceed in relation to a particular charge, or particular charges, in the indictment in priority to other such charges.
- (5) The court may, on the motion of the prosecutor and after hearing the accused, at any time desert the examination of facts pro loco et tempore as respects either the whole indictment or any charge therein.
- (6) Where, and to the extent that, an examination of facts has, under subsection (5) above, been deserted pro loco et tempore, the Lord Advocate may, at any time, raise and insist

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in a new indictment notwithstanding any time limit which would otherwise apply in respect of prosecution of the alleged offence.

- (7) If, in a case where a court has made a finding under subsection (2) of section 174ZA above, a person is subsequently charged, whether on indictment or on a complaint, with an offence arising out of the same act or omission as is referred to in subsection (1) of that section, any order made under section 174ZC(2) of this Act shall, with effect from the commencement of the later proceedings, cease to have effect.
- (8) For the purposes of subsection (7) above, the later proceedings are commenced when the indictment or, as the case may be, the complaint is served.]

Textual Amendments

F6 S. 174ZB inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 49(1); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

[^{F7}174ZC] Disposal of case where accused found to be insane.

- (1) This section applies where—
- (a) a person is, by virtue of section 174(2) or 174ZA(3) of this Act, acquitted on the ground of his insanity at the time of the act or omission; or
 - (b) following an examination of facts under section 174ZA, a court makes a finding under subsection (2) of that section.
- (2) Subject to subsection (3) below, where this section applies the court may, as it thinks fit—
- (a) make an order (which shall have the same effect as a hospital order) that the person be detained in such hospital as the court may specify;
 - (b) in addition to making an order under paragraph (a) above, make an order (which shall have the same effect as a restriction order) that the person shall, without limit of time, be subject to the special restrictions set out in section 62(1) of the Mental Health (Scotland) Act 1984;
 - (c) make an order (which shall have the same effect as a guardianship order) placing the person under the guardianship of a local authority or of a person approved by a local authority;
 - (d) make a supervision and treatment order (within the meaning of paragraph 1(1) of Schedule 5A to this Act); or
 - (e) make no order.
- (3) Where the offence with which the person was charged is murder, the court shall make orders under both paragraphs (a) and (b) of subsection (2) above in respect of that person.
- (4) Sections 175(1) and (3) to (6) and 176 to 178 of this Act shall have effect in relation to the making, terms and effect of an order under paragraph (a), (b) or (c) of subsection (2) above as those provisions have effect in relation to the making, terms and effect of, respectively, a hospital order, a restriction order and a guardianship order as respects a person convicted of an offence, other than an offence the sentence for which is fixed by law, punishable by imprisonment.]

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Textual Amendments

F7 S. 174ZC inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 49(1); S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

[^{F8}174ZD] Appeal by accused in case involving insanity.

- (1) A person may appeal to the High Court against—
 - (a) a finding made under section 174(1) of this Act that he is insane so that his trial cannot proceed or continue, or the refusal of the court to make such a finding;
 - (b) a finding under section 174ZA(2) of this Act; or
 - (c) an order made under section 174ZC(2) of this Act.
- (2) An appeal under subsection (1) above shall be—
 - (a) in writing; and
 - (b) lodged—
 - (i) in the case of an appeal under paragraph (a) of that subsection, not later than seven days after the date of the finding or refusal which is the subject of the appeal;
 - (ii) in the case of an appeal under paragraph (b), or both paragraphs (b) and (c), of that subsection, not later than 28 days after the conclusion of the examination of facts;
 - (iii) in the case of an appeal under paragraph (c) of that subsection against an order made on an acquittal, by virtue of section 174(2) or 174ZA(3) of this Act, on the ground of insanity at the time of the act or omission, not later than 14 days after the date of the acquittal;
 - (iv) in the case of an appeal under that paragraph against an order made on a finding under section 174ZA(2), not later than 14 days after the conclusion of the examination of facts,or within such longer period as the High Court may, on cause shown, allow.
- (3) Subsections (1)(a) and (2)(b)(i) above are without prejudice to section 76A(1) of this Act.
- (4) Where an appeal is taken under subsection (1) above, the period from the date on which the appeal was lodged until it is withdrawn or disposed of shall not count towards any time limit applying in respect of the case.
- (5) An appellant in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.
- (6) In disposing of an appeal under subsection (1) above the High Court may—
 - (a) affirm the decision of the court of first instance;
 - (b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or
 - (c) remit the case to that court with such directions in the matter as the High Court thinks fit.
- (7) Section 280 of this Act shall not apply in relation to any order as respects which a person has a right of appeal under subsection (1)(c) above.]

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Textual Amendments

F8 S. 174ZD inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 51(1); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

[^{F9}174ZE] Appeal by Lord Advocate in case involving insanity.

- (1) The Lord Advocate may appeal to the High Court on a point of law against—
 - (a) a finding under subsection (1) of section 174 of this Act that an accused is insane so that his trial cannot proceed or continue;
 - (b) an acquittal on the ground of insanity at the time of the act or omission by virtue of subsection (2) of that section;
 - (c) an acquittal under section 174ZA(3) of this Act (whether or not on the ground of insanity at the time of the act or omission); or
 - (d) any order made under section 174ZC(2) of this Act.
- (2) An appeal under subsection (1) above shall be—
 - (a) in writing; and
 - (b) lodged—
 - (i) in the case of an appeal under paragraph (a) or (b) of that subsection, not later than seven days after the finding or, as the case may be, the acquittal which is the subject of the appeal;
 - (ii) in the case of an appeal under paragraph (c) or (d) of that subsection, not later than seven days after the conclusion of the examination of facts,
 or within such longer period as the High Court may, on cause shown, allow.
- (3) Subsection (1)(a) and (2)(b)(i) above are without prejudice to section 76A(1) of this Act.
- (4) A respondent in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.
- (5) In disposing of an appeal under subsection (1) above the High Court may—
 - (a) affirm the decision of the court of first instance;
 - (b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or
 - (c) remit the case to that court with such directions in the matter as the High Court thinks fit.]

Textual Amendments

F9 S. 174ZE inserted (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by 1995 c. 20, s. 52(1); S.I. 1996/517, arts. 3(2), 4-6, Sch. 2

[^{F10}174A] Interim hospital orders.

- (1) Where a person is convicted in the High Court or the sheriff court of an offence punishable with imprisonment (other than an offence the sentence for which is fixed by

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law) and the court before or by which he is convicted is satisfied on the written or oral evidence of two medical practitioners (complying with the provisions of subsection (2) of this section and section 176 of this Act)—

- (a) that the offender is suffering from mental disorder within the meaning of [F11Section 1(2) of the M1Mental Health (Scotland) Act 1984]; and
- (b) that there is reason to suppose—
 - (i) that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case; and
 - (ii) that, having regard to the provisions of section 175(4) of this Act, the hospital to be specified in any such hospital order may be a State hospital,

the court may, before making a hospital order or dealing with the offender in some other way, make an order (to be known as “an interim hospital order”) authorising his admission to and detention in a State hospital or such other hospital as for special reasons the court may specify in the order:

Provided that where under any enactment the offender is remitted by the sheriff to the High Court for sentence the power to make an order under this subsection in relation to the offender shall be exercisable by the High Court.

- (2) Of the medical practitioners whose evidence is taken into account under subsection (1) of this section at least one shall be employed at the hospital which is to be specified in the order.
- (3) An interim hospital order shall not be made in respect of an offender unless the court is satisfied that the hospital which is to be specified in the order, 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) Where a court makes an interim hospital order it shall not make any other order for detention or impose a fine or pass sentence of imprisonment or make a probation order or a community service order in respect of the offence, but may make any other order which it has power to make apart from this section.
- (5) The court by which an interim hospital order is made may include in the order such direction as it thinks fit for the conveyance of the offender to a place of safety and his detention therein pending his admission to the hospital within the period of 28 days referred to in subsection (3) of this section.
- (6) An interim hospital order—
 - (a) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but
 - (b) may be renewed for further periods of not more than 28 days at a time if it appears to the court on the written or oral evidence of the responsible medical officer that the continuation of the order is warranted;but no such order shall continue in force for more than 6 months in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides, after considering the written or oral evidence of the responsible medical officer, to deal with the offender in some other way.
- (7) An interim hospital order may be renewed under subsection (6) of this section without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

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- (8) If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court which made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.
- (9) When an interim hospital order ceases to have effect in relation to an offender the court may deal with him in any way (other than by making a new interim hospital order) in which it could have dealt with him if no such order had been made.
- (10) The power conferred on the court by the provisions of this section is without prejudice to the power of the court under section 180(1) of this Act to remand a person in order that an inquiry may be made into his physical or mental condition.]

Textual Amendments

- F10** S. 174A inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 34\(a\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F11** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\), Sch. 3 para. 25](#)

Marginal Citations

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

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—
- 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 ^[F12]the grounds set out in section ^[F13]17(1) or, as the case may be, the ground set out in section ^[F13]36(a) of the ^[F13M2]Mental Health (Scotland) Act 1984] apply in relation to the offender], and
 - 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.

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- (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
- [^{F14}(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 prison is willing to receive that person into guardianship.
- (6) A hospital order or guardianship order shall specify the form of mental disorder, being mental illness or mental [^{F15}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.
- (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 [^{F16}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.

Textual Amendments

- F12** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 31\(a\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#);
- F13** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\), Sch. 3 para. 26](#)
- F14** Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 31\(b\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F15** Word substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 31\(c\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F16** Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 31\(d\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)

Modifications etc. (not altering text)

- C1** [S. 175](#) extended by [Contempt of Court Act 1981 \(c. 49, SIF 39:3\), s. 15\(3\)](#)

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Marginal Citations

M2 1984 c. 36(85).

176 Requirements as to medical evidence.

(1) Of the medical practitioners whose evidence is taken into account under ^{F17}sections ^{F18}174(1), 174A(1) and 175(1)(a) of this Act, at least one shall be a practitioner approved for the purposes of ^{F19}section 20 or section 39 of the ^{M3}Mental Health (Scotland) Act 1984] by a Health Board as having special experience in the diagnosis or treatment of mental disorder.

^{F20}(1A) Written or oral evidence given for the purposes of the said section 175(1)(a) shall include a statement as to whether the person giving the evidence is related to the accused and of any pecuniary interest which that person may have in the admission of the accused to hospital or his reception into guardianship.]

(2) For the purposes of the said ^{F21}sections 174(1) and 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 ^{F22}or, as respects a report for the purposes of section 174(1), remanded in custody] for his examination by any medical practitioner, and any such examination may be made in private.

Textual Amendments

F17 Word substituted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), **Sch. 2 para. 32** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

F18 Words in **s. 176(1)** inserted (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. 66(a)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F19 Words substituted by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), s. 127(1), **Sch. 3 para. 27**

F20 **S. 176(1A)** inserted by virtue of Mental Health (Amendment) (Scotland) Act 1983 (c. 39), s. 127(1), **Sch. 3 para. 27** and Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **s. 126(2)(b)**

Changes to legislation: *Criminal Procedure (Scotland) Act 1975, Cross Heading: Procedure at trial of persons suffering from mental disorder is up to date with all changes known to be in force on or before 13 July 2023. 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*

F21 Word in s. 176(2) 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. 66(b)**; S.I. 1996/517, arts. 3(2), 4-6, **Sch. 2**

F22 Words in s. 176(4) inserted (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. 66(c)**; S.I. 1996/517, arts. 3(a), 4-6, **Sch. 2**

Modifications etc. (not altering text)

C2 S. 176 extended by **Contempt of Court Act 1981 (c. 49, SIF 39:3), s. 15(3)**

Marginal Citations

M3 1984 c. 36(85).

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 provided by a local authority under Part IV of the ^{M4}Social Work (Scotland) Act 1968 shall not be given unless the court is satisfied that that authority is willing to receive the patient therein.

Modifications etc. (not altering text)

C3 S. 177 extended by **Contempt of Court Act 1981 (c. 49, SIF 39:3), s. 15(3)**

Marginal Citations

M4 1968 c. 49(81:3).

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 [^{F23}from serious harm] 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 [^{F24}section 62(1) of the ^{M5}Mental Health (Scotland) Act 1984], ^{F25} . . . without limit of time ^{F25} . . .
- (2) An order under this section (in this Act referred to as [^{F26}“a restriction order”]) shall not be made in the case of any person unless the medical practitioner approved by the Health Board for the purposes of [^{F27}section 20 or section 39 of the ^{M6}Mental Health (Scotland) Act 1984], 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 [^{F28}a restriction order is in force in respect of a patient], 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 [^{F29}section 60(3)] of the ^{M7}Mental Health (Scotland) Act 1984 on the making of another hospital order, that order shall have the same effect in relation to [^{F30}the restriction order] as the previous hospital order, but without prejudice to the

Changes to legislation: Criminal Procedure (Scotland) Act 1975, Cross Heading: Procedure at trial of persons suffering from mental disorder is up to date with all changes known to be in force on or before 13 July 2023. 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

power of the court making that other hospital order to make [^{F31}another restriction order] to have effect on the expiration of the previous such order.

Textual Amendments

- F23** Words inserted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), s. 22\(2\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F24** Words inserted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\)](#), [Sch. 3 para. 28\(a\)](#)
- F25** Words in [s. 178\(1\)](#) repealed (31.3.1996 subject to transitional provisions and savings in the commencing S.I.) by [1995 c. 20, ss. 54, 117\(2\)](#), [Sch. 7 Pt. I](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)
- F26** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 33\(a\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F27** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 127\(1\)](#), [Sch. 3 para. 28\(b\)](#)
- F28** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 33\(b\)\(i\)](#)
- F29** Words in [s. 178\(3\)](#) substituted (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. 67](#); S.I. 1996/517, arts. 3(2), 4-6, [Sch. 2](#)
- F30** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 33\(b\)\(ii\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)
- F31** Words substituted by virtue of [Mental Health \(Amendment\) \(Scotland\) Act 1983 \(c. 39\), Sch. 2 para. 33\(b\)\(iii\)](#) and [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 126\(2\)\(b\)](#)

Modifications etc. (not altering text)

- C4** [S. 178](#) extended by [Contempt of Court Act 1981 \(c. 49, SIF 39:3\), s. 15\(3\)](#)
- C5** [S. 178\(3\)](#) extended by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\), s. 76](#)

Marginal Citations

- M5** [1984 c. 36\(85\)](#).
- M6** [1984 c. 36\(85\)](#).
- M7** [1984 c. 36\(85\)](#).

Changes to legislation:

Criminal Procedure (Scotland) Act 1975, Cross Heading: Procedure at trial of persons suffering from mental disorder is up to date with all changes known to be in force on or before 13 July 2023. 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.

[View outstanding changes](#)

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\(7\)](#)