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# Criminal Procedure (Scotland) Act 1975

## 1975 CHAPTER 21

### PART II

#### SUMMARY PROCEDURE

##### <sup>F1</sup> CONVICTION AND SENTENCE

##### <sup>F1</sup> *Residential and Borstal Training*

#### Textual Amendments

**F1** Act repealed (S.) (1.4.1996) by [Criminal Procedure \(Consequential Provisions\) \(Scotland\) Act 1995](#) (c. 40), s. 6(1), [Sch. 5](#) (with ss. 4, 6(2), [Sch. 3](#) paras. 3, 16, [Sch. 6](#))

#### <sup>F1</sup><sup>F2</sup>**41** **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 [<sup>F3</sup>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 <sup>F4</sup> . . .
- (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;

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“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 <sup>M1</sup>Social Work (Scotland) Act 1968.

- (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.
- <sup>F5</sup> Where a child is detained in residential care in pursuance of an order under—
- (6) (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

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(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) [<sup>F6</sup>(or (6B))]above should be detained in a place in 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**

- F2** S. 413 substituted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 47(4)(a)**, 59(1)
- F3** 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.**
- F4** 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.**
- F5** 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)**
- F6** 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).

<sup>F1</sup>414 .....

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<sup>F1</sup>415 **Detention of young offenders.**

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<sup>F1</sup>416 .....

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<sup>F1</sup>417 .....

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<sup>F1</sup>418 .....

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**<sup>F1</sup>419,** .....  
**420.** .....

**<sup>F1</sup>421** .....  
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**<sup>F1</sup>422** .....  
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**<sup>F1</sup>423** .....  
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**<sup>F1</sup>424 Detention in precincts of court.**  
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**<sup>F1</sup>425 No imprisonment for less than five days.**  
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**<sup>F1</sup>426 Legal custody.**  
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