Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 7

MENTAL DISORDER AND UNFITNESS FOR TRIAL

168 Criminal responsibility of persons with mental disorder

Before section 52 of the 1995 Act insert—

"Criminal responsibility of mentally disordered persons

51A **Criminal responsibility of persons with mental disorder**

(1) A person is not criminally responsible for conduct constituting an offence, and is to be acquitted of the offence, if the person was at the time of the conduct unable by reason of mental disorder to appreciate the nature or wrongfulness of the conduct.

(2) But a person does not lack criminal responsibility for such conduct if the mental disorder in question consists only of a personality disorder which is characterised solely or principally by abnormally aggressive or seriously irresponsible conduct.

(3) The defence set out in subsection (1) is a special defence.

(4) The special defence may be stated only by the person charged with the offence and it is for that person to establish it on the balance of probabilities.

(5) In this section, "conduct" includes acts and omissions.

Diminished responsibility

51B **Diminished responsibility**

(1) A person who would otherwise be convicted of murder is instead to be convicted of culpable homicide on grounds of diminished responsibility if the person's ability to determine or control conduct for which the person would otherwise be convicted of murder was, at the time of the conduct, substantially impaired by reason of abnormality of mind.

(2) For the avoidance of doubt, the reference in subsection (1) to abnormality of mind includes mental disorder.

(3) The fact that a person was under the influence of alcohol, drugs or any other substance at the time of the conduct in question does not of itself—

(a) constitute abnormality of mind for the purposes of subsection (1), or

(b) prevent such abnormality from being established for those purposes.

(4) It is for the person charged with murder to establish, on the balance of probabilities, that the condition set out in subsection (1) is satisfied.

(5) In this section, "conduct" includes acts and omissions.".

Commencement Information

I1 S. 168 in force at 25.6.2012 with application in accordance with art. 3 by S.S.I. 2012/160, art. 3, **Sch.** (with art. 4)

169 Acquittal involving mental disorder: procedure

Before section 54 of the 1995 Act insert—

"Acquittal involving mental disorder

53E **Acquittal involving mental disorder**

(1) Where the prosecutor accepts a plea (by the person charged with the commission of an offence) of the special defence set out in section 51A of this Act, the court must declare that the person is acquitted by reason of the special defence.

(2) Subsection (3) below applies where—

(a) the prosecutor does not accept such a plea, and

(b) evidence tending to establish the special defence set out in section 51A of this Act is brought before the court.

(3) Where this subsection applies the court is to—

(a) in proceedings on indictment, direct the jury to find whether the special defence has been established and, if they find that it has, to declare whether the person is acquitted on that ground,

(b) in summary proceedings, state whether the special defence has been established and, if it states that it has, declare whether the person is acquitted on that ground.”.

Commencement Information

I2 S. 169 in force at 25.6.2012 with application in accordance with art. 3 by S.S.I. 2012/160, art. 3, **Sch.** (with art. 4)

170 Unfitness for trial

(1) In the 1995 Act, after section 53E (inserted by section 169), insert—

“Unfitness for trial

53F Unfitness for trial

(1) A person is unfit for trial if it is established on the balance of probabilities that the person is incapable, by reason of a mental or physical condition, of participating effectively in a trial.

(2) In determining whether a person is unfit for trial the court is to have regard to—

(a) the ability of the person to—

(i) understand the nature of the charge,

(ii) understand the requirement to tender a plea to the charge and the effect of such a plea,

(iii) understand the purpose of, and follow the course of, the trial,

(iv) understand the evidence that may be given against the person,

(v) instruct and otherwise communicate with the person's legal representative, and

(b) any other factor which the court considers relevant.

(3) The court is not to find that a person is unfit for trial by reason only of the person being unable to recall whether the event which forms the basis of the charge occurred in the manner described in the charge.

(4) In this section “the court” means—

(a) as regards a person charged on indictment, the High Court or the sheriff court,

(b) as regards a person charged summarily, the sheriff court.”.

(2) The title of section 54 of the 1995 Act (insanity in bar of trial) is replaced by “Unfitness for trial: further provision”, the cross-heading which precedes it is omitted and the section is amended as follows—

(a) in subsection (1)—

(i) the words “, on the written or oral evidence of two medical practitioners,” are repealed, and

(ii) for “insane” substitute “ unfit for trial ”,

(b) in subsection (3)—

(i) for "the insanity of a person" substitute " whether a person is unfit for trial ", and

(ii) after "mental" insert " or physical ", and

(c) in subsection (5), for "insane" substitute " unfit for trial ".

(3) Subsections (6) and (7) are repealed.

Commencement Information

I3 S. 170 in force at 25.6.2012 with application in accordance with art. 3 by S.S.I. 2012/160, art. 3, **Sch.** (with art. 4)

171 Abolition of common law rules

Any rule of law providing for—

(a) the special defence of insanity,

(b) the plea of diminished responsibility, or

(c) insanity in bar of trial,

ceases to have effect.

Commencement Information

I4 S. 171 in force at 25.6.2012 with application in accordance with art. 3 by S.S.I. 2012/160, art. 3, **Sch.** (with art. 4)

Changes to legislation:
There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 7.