



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VI

#### MENTAL DISORDER

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

#### 54 Insanity in bar of trial

- (1) Where the court is satisfied, on the written or oral evidence of two medical practitioners, that a person charged 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 (2) 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 55 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.
- (2) 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*.
- (3) 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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*Status: This is the original version (as it was originally enacted).*

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- (4) 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 Act, as the court considers appropriate.
- (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.
- (6) Where evidence is brought before the court that the accused was insane at the time of doing the act or making the omission constituting the offence with which he is charged and he is acquitted, the court shall—
- (a) in proceedings on indictment, direct the jury to find; or
  - (b) in summary proceedings, state,
- whether the accused was insane at such time as aforesaid, and, if so, to declare whether he was acquitted on account of his insanity at that time.
- (7) It shall not be competent for a person charged summarily in the sheriff court to found on a plea of insanity standing in bar of trial unless, before the first witness for the prosecution is sworn, he gives notice to the prosecutor of the plea and of the witnesses by whom he proposes to maintain it; and where such notice is given, the court shall, if the prosecutor so moves, adjourn the case.
- (8) 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.