

# **CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 7 - Mental Disorder and Unfitness for Trial**

##### ***Section 169 - Acquittal involving mental disorder: procedure***

715. [Section 169](#) inserts a new section 53E into the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). The new section deals with the procedure where an accused is acquitted by reason of mental disorder.
716. Subsection (1) of the new section 53E replaces the existing statutory procedure under section 54(6) of the 1995 Act for acquittal involving mental disorder. Under section 54(6) of the 1995 Act (before its repeal by this Act), where the defence of insanity is raised in a solemn case, there must be a verdict returned by the jury. A consequence of section 54(6) is that a jury requires to be empanelled and directed to return a verdict even where the Crown accepts a plea of insanity. This subsection provides for a different procedure for the statutory defence based on mental disorder. Where the Crown accepts a plea by the accused based on the defence, the court is to declare that the accused has been acquitted by reason of the special defence. This provision assimilates the procedure for solemn and summary cases. A declaration setting out the special nature of the acquittal is necessary in order to trigger the provisions in Part VI of the 1995 Act which deal with disposals.
717. Subsections (2) and (3) of the new section 53E provide for the situation where the Crown has not accepted a plea by the accused of the defence based on mental disorder. The defence does not become an issue for the court or jury to consider unless there has been evidence to support it. If the defence falls to be considered, in solemn cases the court must direct the jury to make a finding whether or not they accept that the defence has been established. Where the jury find that the defence has been established they must also declare whether their verdict of acquittal is based on the defence. A similar procedure applies in summary cases, where the court must state whether it finds that the defence has been established. If it has, the court must also declare whether the accused has been acquitted on that ground. The purpose of the declaration, in both solemn and summary cases, is to deal with the possibility that a jury might acquit the accused on some other ground. In this situation, even if the defence has been proved, the acquittal is not a special one triggering the disposal provisions of Part VI of the 1995 Act.