



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 7

MENTAL DISORDER AND UNFITNESS FOR TRIAL

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.

Status: This is the original version (as it was originally enacted).

- (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 - (i) the words “, on the written or oral evidence of two medical practitioners,” are repealed, and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- (3) Subsections (6) and (7) are repealed.