



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART VI

#### MENTAL DISORDER

##### *Examination of facts*

#### 55 Examination of facts.

- (1) At an examination of facts ordered under section 54(1)(b) of this Act the court shall, on the basis of the evidence (if any) already given in the trial and such evidence, or further evidence, as may be led by either party, determine whether it is satisfied—
  - (a) beyond reasonable doubt, as respects any charge on the indictment or, as the case may be, the complaint in respect of which the accused was being or was to be tried, that he did the act or made the omission constituting the offence; and
  - (b) on the balance of probabilities, that there are no grounds for acquitting him.
- (2) Where the court is satisfied as mentioned in subsection (1) above, it shall make a finding to that effect.
- (3) Where the court is not so satisfied it shall, subject to subsection (4) below, acquit the person of the charge.
- (4) Where, as respects a person acquitted under subsection (3) above, the court is satisfied as to the matter mentioned in subsection (1)(a) above but it appears to the court that the person was [<sup>F1</sup>not, because of section 51A of this Act, criminally responsible for the conduct] constituting the offence, the court shall state whether the acquittal is [<sup>F2</sup>by reason of the special defence set out in that section] .
- (5) Where it appears to the court that it is not practical or appropriate for the accused to attend an examination of facts the court may, if no objection is taken by or on behalf of the accused, order that the examination of facts shall proceed in his absence.
- (6) Subject to the provisions of this section, section 56 of this Act and any Act of Adjournal the rules of evidence and procedure and the powers of the court shall, in

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respect of an examination of facts, be as nearly as possible those applicable in respect of a trial.

- (7) For the purposes of the application to an examination of facts of the rules and powers mentioned in subsection (6) above, an examination of facts—
- (a) commences when the indictment or, as the case may be, complaint is called; and
  - (b) concludes when the court—
    - (i) acquits the person under subsection (3) above;
    - (ii) makes an order under subsection (2) of section 57 of this Act; or
    - (iii) decides, under paragraph (e) of that subsection, not to make an order.

#### Textual Amendments

- F1** Words in s. 55(4) substituted (with application in accordance with art. 3 of the commencing S.S.I.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 7 para. 37\(a\)](#); S.S.I. 2012/160, art. 3, sch.
- F2** Words in s. 55(4) substituted (with application in accordance with art. 3 of the commencing S.S.I.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), [sch. 7 para. 37\(b\)](#); S.S.I. 2012/160, art. 3, sch.

## 56 Examination of facts: supplementary provisions.

- (1) An examination of facts ordered under section 54(1)(b) of this Act may, where the order is made at the trial diet [<sup>F3</sup>or, in proceedings on indictment, at the first diet (in the case of proceedings in the sheriff court) or the preliminary hearing (in the case of proceedings in the High Court)] , be held immediately following the making of the order and, where it is so held, the citation of the accused and any witness to the trial diet [<sup>F4</sup>, first diet or, as the case may be, preliminary hearing] shall be a valid citation to the examination of facts.
- (2) <sup>F5</sup> .....
- (3) Where an accused person is not legally represented at an examination of facts the court shall appoint counsel or a solicitor to represent his interests.
- (4) The court may, on the motion of the prosecutor and after hearing the accused, order that the examination of facts shall proceed in relation to a particular charge, or particular charges, in the indictment or, as the case may be, complaint in priority to other such charges.
- (5) The court may, on the motion of the prosecutor and after hearing the accused, at any time desert the examination of facts *pro loco et tempore* as respects either the whole indictment or, as the case may be, complaint or any charge therein.
- (6) Where, and to the extent that, an examination of facts has, under subsection (5) above, been deserted *pro loco et tempore*—
- (a) in the case of proceedings on indictment, the Lord Advocate may, at any time, raise and insist in a new indictment; or
  - (b) in the case of summary proceedings, the prosecutor may at any time raise a fresh libel,

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notwithstanding any time limit which would otherwise apply in respect of prosecution of the alleged offence.

(7) If, in a case where a court has made a finding under subsection (2) of section 55 of this Act, a person is subsequently charged, whether on indictment or on a complaint, with an offence arising out of the same act or omission as is referred to in subsection (1) of that section, any order made under section 57(2) of this Act shall, with effect from the commencement of the later proceedings, cease to have effect.

(8) For the purposes of subsection (7) above, the later proceedings are commenced when the indictment or, as the case may be, the complaint is served.

#### Textual Amendments

- F3** Words in s. 56(1) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 14\(a\)\(i\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F4** Words in s. 56(1) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 14\(a\)\(ii\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)
- F5** S. 56(2) repealed (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), ss. 25, 27(1), [Sch. para. 14\(b\)](#); S.S.I. 2004/405, [art. 2](#), Sch. 1 (subject to arts. 3-5)

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