



Criminal Procedure (Insanity and Unfitness to Plead) Act 1991

1991 CHAPTER 25

1 Acquittals on grounds of insanity

- (1) A jury shall not return a special verdict under section 2 of the Trial of Lunatics Act 1883 (acquittal on ground of insanity) except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.
- (2) Subsections (2) and (3) of section 54 of the Mental Health Act 1983 (“the 1983 Act”) shall have effect with respect to proof of the accused’s mental condition for the purposes of the said section 2 as they have effect with respect to proof of an offender’s mental condition for the purposes of section 37(2)(a) of that Act.

2 Findings of unfitness to plead etc

For section 4 of the Criminal Procedure (Insanity) Act 1964 (“the 1964 Act”) there shall be substituted the following sections—

“4 Finding of unfitness to plead

- (1) This section applies where on the trial of a person the question arises (at the instance of the defence or otherwise) whether the accused is under a disability, that is to say, under any disability such that apart from this Act it would constitute a bar to his being tried.
- (2) If, having regard to the nature of the supposed disability, the court are of opinion that it is expedient to do so and in the interests of the accused, they may postpone consideration of the question of fitness to be tried until any time up to the opening of the case for the defence.
- (3) If, before the question of fitness to be tried falls to be determined, the jury return a verdict of acquittal on the count or each of the counts on which the accused is being tried, that question shall not be determined.

Status: This is the original version (as it was originally enacted).

- (4) Subject to subsections (2) and (3) above, the question of fitness to be tried shall be determined as soon as it arises.
- (5) The question of fitness to be tried shall be determined by a jury and—
 - (a) where it falls to be determined on the arraignment of the accused and the trial proceeds, the accused shall be tried by a jury other than that which determined that question;
 - (b) where it falls to be determined at any later time, it shall be determined by a separate jury or by the jury by whom the accused is being tried, as the court may direct.
- (6) A jury shall not make a determination under subsection (5) above except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved.

4A Finding that the accused did the act or made the omission charged against him

- (1) This section applies where in accordance with section 4(5) above it is determined by a jury that the accused is under a disability.
- (2) The trial shall not proceed or further proceed but it shall be determined by a jury—
 - (a) on the evidence (if any) already given in the trial; and
 - (b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this section to put the case for the defence,

whether they are satisfied, as respects the count or each of the counts on which the accused was to be or was being tried, that he did the act or made the omission charged against him as the offence.
- (3) If as respects that count or any of those counts the jury are satisfied as mentioned in subsection (2) above, they shall make a finding that the accused did the act or made the omission charged against him.
- (4) If as respects that count or any of those counts the jury are not so satisfied, they shall return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion.
- (5) A determination under subsection (2) above shall be made—
 - (a) where the question of disability was determined on the arraignment of the accused, by a jury other than that which determined that question; and
 - (b) where that question was determined at any later time, by the jury by whom the accused was being tried.”

3 Powers to deal with persons not guilty by reason of insanity or unfit to plead etc

For section 5 of the 1964 Act there shall be substituted the following section—

“5 Powers to deal with persons not guilty by reason of insanity or unfit to plead etc

- (1) This section applies where—
 - (a) a special verdict is returned that the accused is not guilty by reason of insanity; or
 - (b) findings are recorded that the accused is under a disability and that he did the act or made the omission charged against him.
- (2) Subject to subsection (3) below, the court shall either—
 - (a) make an order that the accused be admitted, in accordance with the provisions of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, to such hospital as may be specified by the Secretary of State; or
 - (b) where they have the power to do so by virtue of section 5 of that Act, make in respect of the accused such one of the following orders as they think most suitable in all the circumstances of the case, namely—
 - (i) a guardianship order within the meaning of the Mental Health Act 1983;
 - (ii) a supervision and treatment order within the meaning of Schedule 2 to the said Act of 1991; and
 - (iii) an order for his absolute discharge.
- (3) Paragraph (b) of subsection (2) above shall not apply where the offence to which the special verdict or findings relate is an offence the sentence for which is fixed by law.”

4 Corresponding provisions with respect to appeals

- (1) For section 6 of the Criminal Appeal Act 1968 (“the 1968 Act”) there shall be substituted the following section—

“6 Substitution of finding of insanity or findings of unfitness to plead etc

- (1) This section applies where, on an appeal against conviction, the Court of Appeal, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion—
 - (a) that the proper verdict would have been one of not guilty by reason of insanity; or
 - (b) that the case is not one where there should have been a verdict of acquittal, but there should have been findings that the accused was under a disability and that he did the act or made the omission charged against him.
- (2) Subject to subsection (3) below, the Court of Appeal shall either—
 - (a) make an order that the appellant be admitted, in accordance with the provisions of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, to such hospital as may be specified by the Secretary of State; or

- (b) where they have the power to do so by virtue of section 5 of that Act, make in respect of the appellant such one of the following orders as they think most suitable in all the circumstances of the case, namely—
 - (i) a guardianship order within the meaning of the Mental Health Act 1983;
 - (ii) a supervision and treatment order within the meaning of Schedule 2 to the said Act of 1991; and
 - (iii) an order for his absolute discharge.
 - (3) Paragraph (b) of subsection (2) above shall not apply where the offence to which the appeal relates is an offence the sentence for which is fixed by law.”
- (2) For section 14 of the 1968 Act there shall be substituted the following sections—

“14 Substitution of findings of unfitness to plead etc

- (1) This section applies where, on an appeal under section 12 of this Act, the Court of Appeal, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion that—
 - (a) the case is not one where there should have been a verdict of acquittal; but
 - (b) there should have been findings that the accused was under a disability and that he did the act or made the omission charged against him.
- (2) Subject to subsection (3) below, the Court of Appeal shall either—
 - (a) make an order that the appellant be admitted, in accordance with the provisions of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, to such hospital as may be specified by the Secretary of State; or
 - (b) where they have the power to do so by virtue of section 5 of that Act, make in respect of the appellant such one of the following orders as they think most suitable in all the circumstances of the case, namely—
 - (i) a guardianship order within the meaning of the Mental Health Act 1983;
 - (ii) a supervision and treatment order within the meaning of Schedule 2 to the said Act of 1991; and
 - (iii) an order for his absolute discharge.
- (3) Paragraph (b) of subsection (2) above shall not apply where the offence to which the appeal relates is an offence the sentence for which is fixed by law.

14A Substitution of verdict of acquittal

- (1) This section applies where, in accordance with section 13(4)(b) of this Act, the Court of Appeal substitute a verdict of acquittal and the Court, on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved, are of opinion—
 - (a) that the appellant is suffering from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and

(b) that he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

(2) The Court of Appeal shall make an order that the appellant be admitted for assessment, in accordance with the provisions of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, to such hospital as may be specified by the Secretary of State.”

5 Orders under 1964 and 1968 Acts

(1) The provisions of Schedule 1 to this Act shall apply in relation to the following orders, namely—

- (a) any order made by the Crown Court under section 5 of the 1964 Act that the accused be admitted to hospital; and
- (b) any order made by the Court of Appeal under section 6, 14 or 14A of the 1968 Act that the appellant be so admitted.

(2) The 1983 Act shall have effect, in its application to guardianship orders within the meaning of that Act, as if the reference in section 37(1) to a person being convicted before the Crown Court of such an offence as is there mentioned included references—

- (a) to a special verdict being returned that the accused is not guilty by reason of insanity, or to findings being recorded that the accused is under a disability and that he did the act or made the omission charged against him; and
- (b) to the Court of Appeal being, on an appeal against conviction or under section 12 of the 1968 Act, of such opinion as is mentioned in section 6(1) or 14(1) of that Act;

and in relation to guardianship orders made by virtue of this subsection, references in the 1983 Act to the offender shall be construed accordingly.

(3) The power to make a supervision and treatment order within the meaning given by Part I of Schedule 2 to this Act shall be exercisable, subject to and in accordance with Part II of that Schedule—

- (a) by the Crown Court in cases to which section 5 of the 1964 Act applies; and
- (b) by the Court of Appeal in cases to which section 6 or 14 of the 1968 Act applies;

and Part III of that Schedule shall have effect with respect to the revocation and amendment of such orders.

(4) Section 1A(1) of the Powers of Criminal Courts Act 1973 shall have effect, in its application to orders for absolute discharge, as if—

- (a) the reference to a person being convicted by or before a court of such an offence as is there mentioned included such references as are mentioned in subsection (2)(a) and (b) above; and
- (b) the reference to the court being of opinion that it is inexpedient to inflict punishment included a reference to it thinking that an order for absolute discharge would be most suitable in all the circumstances of the case.

6 Interpretation etc

(1) In this Act—

“the 1964 Act” means the Criminal Procedure (Insanity) Act 1964;

“the 1968 Act” means the Criminal Appeal Act 1968;

“the 1983 Act” means the Mental Health Act 1983;

“duly approved”, in relation to a registered medical practitioner, means approved for the purposes of section 12 of the 1983 Act by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder.

- (2) Other expressions used in this Act which are also used in the 1983 Act have the same meanings as in Part III of that Act; and references to that Act in sections 137 to 139 of that Act shall include references to Schedule 1 to this Act.

7 Minor and consequential amendments

The enactments mentioned in Schedule 3 to this Act shall have effect subject to the amendments there specified, being minor amendments or amendments consequential on the preceding provisions of this Act.

8 Transitional provisions, savings and repeals

- (1) The following provisions, namely—

- (a) sections 1 to 3 above;
- (b) so far as relating to the making of orders or orders made under the 1964 Act, section 5 above and Schedules 1 and 2 to this Act; and
- (c) so far as relating to the repeals in the 1964 Act, the repeal in Schedule 5 to the 1968 Act and the repeal of paragraph 18(b) of Schedule 4 to the 1983 Act, subsection (3) below and Schedule 4 to this Act,

shall not apply where the accused was arraigned before the commencement of this Act.

- (2) The following provisions, namely—

- (a) section 4 above;
- (b) so far as relating to the making of orders or orders made under the 1968 Act, section 5 above and Schedules 1 and 2 to this Act;
- (c) paragraphs 2 to 4 of Schedule 3 to this Act and, so far as relating to those paragraphs, section 7 above; and
- (d) so far as relating to repeals not mentioned in subsection (1)(c) above, subsection (3) below and Schedule 4 to this Act,

shall not apply where the hearing of the appeal began before that commencement.

- (3) The enactments mentioned in Schedule 4 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

9 Short title, commencement and extent

- (1) This Act may be cited as the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) This Act extends to England and Wales only.