

# **CRIMINAL CASES REVIEW (INSANITY) ACT 1999**

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## **EXPLANATORY NOTES**

### **BACKGROUND**

#### ***The special verdict***

4. Section 2(1) of the Trial of Lunatics Act 1883 provided as follows:

“Where in any indictment or information any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such a person for that offence that he was insane, so as not to be responsible, according to law, for his actions at the time when the act was done or the omission made, then, if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict to the effect that the accused was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission.

This verdict is commonly referred to as “guilty but insane”. Section 3 of the 1883 Act extended to Ireland but not to Scotland.
5. Soon after the passing of the Criminal Appeal Act 1907, which established the Court of Criminal Appeal, the question arose whether there was an appeal to that Court against a verdict of “guilty but insane”. In *Felstead* [1914] AC 534, the House of Lords held that a person found guilty but insane was acquitted of the offence because he lacks the guilty mind required for him to be convicted so that no appeal was possible against the finding that the accused did the act or that he was insane at the time.
6. Although recommendations for a change in the law, to remove the reference in the verdict to the guilt of the accused, were made in 1923 and in 1953, no change was made until the 1960s. The Mental Health Act (Northern Ireland) 1961 repealed the 1883 Act in its application to Northern Ireland and introduced the *finding* of not guilty on the ground of insanity: see now article 50 of the [Mental Health \(Northern Ireland\) Order 1986 \(S.I. 1986/595 \(N.I.4\)\)](#). England and Wales, the Criminal Procedure (Insanity) Act 1964 amended section 2(1) of the 1883 Act so that the *verdict* became one of not guilty by reason of insanity.
7. Section 2 of the 1964 Act provided for a right of appeal against the new verdict and, under subsection (4), the power of the Secretary of State to refer a conviction to the Court of Criminal Appeal (under section 19 of the 1907 Act) was to include cases involving the new verdict. Equivalent provision for Northern Ireland was made by section 15 of the Criminal Justice Act (Northern Ireland) 1966. The provisions for appeal against the new verdict and finding are now to be found in sections 12, 13 and 17 of the Criminal Appeal Act 1968 for England and Wales and sections 12 and 14 of the Criminal Appeal (Northern Ireland) Act 1980. But it remained the case that there was no appeal against a verdict of “guilty but insane”.

***The Criminal Cases Review Commission***

8. The Commission was established by Part II of the Criminal Appeal Act 1995. It is empowered to review and investigate possible miscarriages of justice in England, Wales and Northern Ireland. On 31 March 1997, the Commission took over the powers formerly exercised by the Home Secretary and the Secretary of State for Northern Ireland to refer a conviction or sentence on indictment to the Court of Appeal. Sections 9(5) and 10(6) of the 1995 Act transferred to the Commission the power to refer the new verdict and finding of not guilty by reason of insanity in England and Wales and in Northern Ireland respectively. In all cases, the Commission can only make a reference if certain criteria are met (see further paragraph 12 below) and the Court of Appeal has to treat the reference as an appeal against the verdict or finding. No provision was made for the Commission to refer a verdict of “guilty but insane” to the Court of Appeal.

***Recent developments***

9. In 1998, Mr Iain Hay Gordon, against whom a jury had returned a verdict of guilty but insane when he was tried in Northern Ireland in 1953 for murder, made an application to the Commission to have his case referred to the Court of Appeal. Section 14(3) of the 1995 Act provides for the Commission to refer to the Court of Appeal any point on which they desire its opinion in considering whether to make a reference. Under this provision, the Commission referred to the Court of Appeal in Northern Ireland the issue of whether they had the power to make the reference sought by Mr Gordon. On 30 June 1998, the Court held that section 10(6) of the 1995 Act did not allow the Commission to refer the verdict of guilty but insane. Their reasoning would also have led the Court to reach that conclusion in respect of section 9(5), which applies to England and Wales.