

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

---

## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 1: Reference of former verdict of guilty but insane***

12. *Subsection (2)*: the conditions which have to be satisfied if the Commission is to refer a verdict of guilty but insane to the Court of Appeal, as provided for by *subsection (1)*, mirror those in section 13 of the 1995 Act for the Commission to refer a verdict or finding of not guilty by reason of insanity. However, one of those conditions - that an appeal against the conviction or finding has to have been determined or leave to appeal against it been refused (section 13 (1)(c)) - is not applied by the Act, because, as explained in paragraphs 5 and 7 above, there is no right of appeal against the verdict of guilty but insane.
13. The further provisions in section 14 of the 1995 Act about the making of references by the Commission, applied by *subsection (3)* to any reference of a verdict of guilty but insane, include, for instance, what the Commission shall have regard to in considering whether to make a reference, and the requirement for it to give a statement of the reasons for its decision. The supplementary powers given to the Commission in sections 17 to 22 of the 1995 Act, and the provisions on the disclosure of information by the Commission in sections 23 to 25, will apply automatically to the Commission's consideration of whether to refer a verdict of guilty but insane.

#### ***Section 2: reference treated as an appeal: England and Wales***

14. *Subsection (1)*: section 12 of the Criminal Appeal Act 1968 makes provision for an appeal against the verdict of not guilty by reason of insanity. Sections 13 and 14 of the 1968 Act (reproduced on pages 5 and 6 of these notes) set out the powers of the Court of Appeal on an appeal under section 12. *Subsection (2)* applies those provisions to the reference of a verdict of guilty but insane with minor modifications.
15. In brief, section 13 deals with the disposal of an appeal under section 12, requiring the Court of Appeal to allow the appeal if they think that the verdict is unsafe, and to dismiss it in any other case. Where the Court finds that the accused was not insane but *was* guilty of an offence, they can substitute a verdict of guilty of that offence, and shall have like powers of dealing with the appellant as the court at trial would have had, except that the death penalty cannot be imposed.
16. Section 14 of the 1968 Act provides that, if the Court of Appeal concludes that the proper findings in a case in which there has been an appeal under section 12 would have been that the accused "was under a disability and that he did the act or made the omission charged against him", the Court of Appeal shall either make an order that the appellant shall be admitted to hospital, or, where they have the power to do so, a guardianship order, supervision and treatment order, or an order for the appellant's absolute discharge. Because there could not have been such findings in cases before

*These notes refer to the Criminal Cases Review (Insanity) Act  
1999 (c.25) which received Royal Assent on 27th July 1999*

the Criminal Procedure (Insanity and Unfitness to Plead Act) 1991, subsection 2(2)(b) has the effect of requiring the Court in these cases to consider not what findings there should have been, but simply what the facts of the case are.

***Section 3: reference treated as appeal: Northern Ireland***

17. This section makes provision parallel to that made by section 2 for Northern Ireland. It operates on sections 12 and 13 of the Criminal Appeal (Northern Ireland) Act 1980 which are reproduced on pages 7 and 8 of these notes.