



2016 CHAPTER 18

PART 10 CRIMINAL JUSTICE

PROSPECTIVE

CHAPTER 6

UNFITNESS TO BE TRIED ETC

Procedure during trial on indictment

Procedure where question of fitness to be tried arises

204.—(1) This section applies where, on the trial of a person charged on indictment with the commission of an offence, the question arises (at the instance of the defence or otherwise) whether the accused is unfit to be tried.

(2) In the following provisions of this section that question is referred to as “the question of fitness to be tried”.

(3) The question of fitness to be tried must be determined as soon as it arises; but this is subject to subsections (4) and (5).

(4) The court may postpone consideration of the question of fitness to be tried until any time up to the opening of the case for the defence if, having regard to the nature of the supposed condition of the accused, the court considers that the postponement is appropriate and is in the interests of the accused.

Status: This version of this chapter contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, CHAPTER 6 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(5) If, before the question of fitness to be tried falls to be determined, the jury returns a verdict of acquittal on the count or each of the counts on which the accused is being tried, that question must not be determined.

(6) The question of fitness to be tried is to be determined by the court without a jury.

(7) The court may determine that the accused is unfit to be tried only if it is satisfied on the required medical evidence that the accused is unfit to be tried.

(8) In this section “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.

Finding that the accused did the act or made the omission charged

205.—(1) This section applies where in accordance with section 204(6) it is determined by a court that the accused is unfit to be tried.

(2) The trial must not proceed or further proceed but it must 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 it is satisfied, as respects the count or each of the counts on which the accused was to be or was being tried, that the accused did the act or made the omission charged against the accused as the offence.

(3) If as respects that count or any of those counts the jury is satisfied as mentioned in subsection (2), it must make a finding that the accused did the act or made the omission charged against the accused.

(4) If as respects that count or any of those counts the jury is not so satisfied, it must return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion.

(5) Where the question of fitness to be tried was determined after arraignment of the accused, the determination under subsection (2) is to be made by the jury by whom the accused was being tried.

Procedure in relation to finding of insanity

206.—(1) This section applies where, on the trial on indictment of any person charged with the commission of an offence—

(a) the required medical evidence is given that the person charged was an insane person at the time the offence was committed; and

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(b) the jury finds that although the person charged did the act or made the omission charged, he or she was an insane person at that time.

(2) The court must direct a finding to be recorded to the effect that the person is not guilty of the offence charged on the ground of insanity.

(3) In this section—

“insane person” and “insanity” have the meanings given by section 1 of the Criminal Justice Act (Northern Ireland) 1966;

“the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.

Powers to deal with person unfit to be tried or not guilty by reason of insanity

207.—(1) This section applies where—

(a) findings are recorded that the accused is unfit to be tried and that the accused did the act or made the omission charged; or

(b) a finding is recorded that the accused is not guilty by reason of insanity.

(2) Subject to the following provisions of this section, the court must—

(a) make a public protection order without restrictions (see section 167(3));

(b) make a public protection order with restrictions (see section 167(4));

(c) make a supervision and assessment order; or

(d) make an order for the absolute discharge of the accused.

(3) The power to make an order under subsection (2)(a) is exercisable only if the detention conditions are met.

(4) The power to make an order under subsection (2)(b) is exercisable only if the detention conditions and the restriction condition are met.

(5) Sections 168 and 169 (meaning of “the detention conditions” and “the restriction condition”) apply for the purposes of this section (any reference to the offender being read as a reference to the accused, and any reference to the offence being read accordingly).

(6) The power to make an order under subsection (2)(c) is subject to Schedule 7, which makes provision about such orders.

(7) Where the offence to which the finding or findings relate is one for which the sentence is fixed by law—

(a) subsections (2) to (6) do not apply;

(b) the court must make a public protection order with restrictions; and

(c) the order must not include provision to the effect that it is to be treated as a public protection order with restrictions for a specified period only.

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(8) Subject to section 208, a public protection order made under this section has the same effect as if it had been made under section 167 (as to that effect, see the provisions mentioned in section 167(5)).

Remission for trial where person no longer unfit to be tried

208.—(1) This section applies where—

- (a) findings mentioned in section 207(1)(a) have been recorded in respect of a person;
- (b) the person is liable to be detained under a public protection order made under section 207 or is subject to a supervision and assessment order made under that section; and
- (c) a suitable medical practitioner notifies the Department of Justice that, in that practitioner's opinion, the person is no longer unfit to be tried.

(2) If the person is liable to be detained under a public protection order—

- (a) the Department of Justice may remit the person to the Crown Court at the relevant place, for trial; and
- (b) where it does so, the order ceases to have effect once the person has arrived at the Crown Court at the relevant place and the Crown Court has made any order relating to the trial.

(3) If the person is subject to a supervision and assessment order—

- (a) the Department of Justice may remit the person's case to the Crown Court at the relevant place, for trial; and
- (b) where it does so, the order ceases to have effect once the person's case has been so remitted and the Crown Court has made any order relating to the trial.

(4) In this section—

“the relevant place” means the place where, but for the findings mentioned in subsection (1)(a), the person would have been tried;

“a suitable medical practitioner” means—

- (a) the responsible medical practitioner; or
- (b) any approved medical practitioner.

Procedure of court of summary jurisdiction

Power to make order where the accused did the act or made the omission charged

209 Where—

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- (a) a person is charged before a court of summary jurisdiction with any act or omission as an offence,
- (b) the court would have power on convicting the person of the offence to make an order under section 167 (public protection orders), and
- (c) the court is satisfied that the accused did the act or made the omission charged,

the court may, if it considers it appropriate to do so, make the order under section 167 without convicting the accused.

Restraining orders

Power to make restraining order following finding of unfitness to plead etc

210.—(1) In Article 7 of the Protection from Harassment (Northern Ireland) Order 1997 (restraining orders on conviction) (“the 1997 Order”)—

- (a) in the heading at the end insert “ etc ”;
- (b) for paragraph (7) substitute—

“(7) A court—

- (a) which deals with a person convicted of an offence under this Article, or
- (b) before which a person is acquitted of an offence under this Article,

may vary or discharge the order in question by a further order.

(8) In paragraphs (1) and (7) references to a person convicted of an offence include—

- (a) a person in respect of whom findings that the person is unfit to be tried, and that the person did the act or made the omission charged against him or her in respect of the offence, have been made; and
- (b) a person in respect of whom a public protection order (as defined by section 167 of the Mental Capacity Act (Northern Ireland) 2016) has been made in respect of the offence by virtue of section 209 of that Act.

(9) Where an order under this Article is made in respect of a person by virtue of paragraph (7)(b) or (8), the person has the same right of appeal against the order as if—

- (a) the person had been convicted of the offence in question before the court that made the order; and
- (b) that court had made the order when dealing with the person in respect of that offence.”.

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(2) In Article 7A(2) of the 1997 Order (restraining orders on acquittal) after “7” insert “ (and paragraph (8) so far as applying for the purposes of paragraph (7)) ”.

(3) The amendments made by subsections (1) and (2) apply in relation to offences committed (or alleged to have been committed) before (as well as after) the coming into operation of this section.

(4) In Article 7(8)(b) of the 1997 Order (inserted by subsection (1))—

- (a) the reference to a public protection order is to be read, until the coming into operation of section 167, as a reference to a hospital order within the meaning of the Mental Health Order; and
- (b) the reference to section 209 is to be read, until the coming into operation of that section, as a reference to Article 44(4) of the Mental Health Order.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 285(2)(a)-(c) substituted for s. 285(2)(a)(b) by [2022 c. 18 \(N.I.\) Sch. 3 para. 77\(b\)](#)