



# Criminal Procedure (Insanity and Unfitness to Plead) Act 1991

## 1991 CHAPTER 25

**E+W**

An Act to amend the law relating to the special verdict and unfitness to plead; to increase the powers of courts in the event of defendants being found to be insane or unfit to plead; and to provide for a trial of the facts in the cases of defendants found to be unfit to plead. [27th June 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Acquittals on grounds of insanity. **E+W****

- (1) A jury shall not return a special verdict under section 2 of the <sup>M1</sup>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 <sup>M2</sup>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.

#### **Commencement Information**

**II** S. 1 wholly in force at 1.1.1992 see s. 9(2) and S.I. 1991/2488, art. 2.

#### **Marginal Citations**

**M1** 1883 c. 38.

**M2** 1983 c. 20.

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*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991. (See end of Document for details)*

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## **.2 Findings of unfitness to plead etc. E+W**

For section 4 of the <sup>M3</sup>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.
- (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.

*Status: Point in time view as at 01/04/2013.*

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- (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.”

**Commencement Information**

**I2** S. 2 wholly in force at 1.1.1992 see s. 9(2) and S.I. 1991/2488, art. 2.

**Marginal Citations**

**M3** 1964 c. 84.

**<sup>F1</sup>3 Powers to deal with persons not guilty by reason of insanity or unfit to plead etc. E+W**

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**Textual Amendments**

**F1** S. 3 repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), s. 60, Sch. 11; S.I. 2005/579, art. 3(i)

**4 Corresponding provisions with respect to appeals. E+W**

- (1) For section 6 of the <sup>M4</sup>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.

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- (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

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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.”

**Commencement Information**

**I3** S. 4 wholly in force at 1.1.1992 see s. 9(2) and S.I. 1991/2488, art. 2.

**Marginal Citations**

**M4** 1968 c. 19.

**F25** **Orders under 1964 and 1968 Acts.** **E+W**

**Textual Amendments**

**F2** S. 5 repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 24(5), 60, Sch. 11; S.I. 2005/579, art. 3(i)

**Commencement Information**

**I4** S. 5 wholly in force at 1.1.1992 see s. 9(2) and S.I. 1991/2488, art. 2.

**6** **Interpretation etc.** **E+W**

(1) In this Act—

“the 1964 Act” means the <sup>M5</sup>Criminal Procedure (Insanity) Act 1964;

“the 1968 Act” means the <sup>M6</sup>Criminal Appeal Act 1968;

“the 1983 Act” means the <sup>M7</sup>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<sup>F3</sup>, or by another person by virtue of section 12ZA or 12ZB of that Act,] as having special experience in the diagnosis or treatment of mental disorder.

<sup>F4</sup> ...

<sup>F5</sup>(2) .....

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#### Textual Amendments

- F3** Words in s. 6(1) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 38(5)(c)**, 306(4); [S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F4** Words in s. 6(1) repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, **Sch. 11**; [S.I. 2005/579, art. 3\(i\)](#)
- F5** S. 6(2) repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, **Sch. 11**; [S.I. 2005/579, art. 3\(i\)](#)

#### Commencement Information

- I5** S. 6 wholly in force at 1.1.1992 see s. 9(2) and [S.I. 1991/2488, art. 2](#).

#### Marginal Citations

- M5** [1964 c. 84](#).
- M6** [1968 c. 19](#).
- M7** [1983 c. 20](#).

## 7 Minor and consequential amendments. **E+W**

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.

#### Commencement Information

- I6** S. 7 wholly in force at 1.1.1992 see s. 9(2) and [S.I. 1991/2488, art. 2](#).

## 8 Transitional provisions, savings and repeals. **E+W**

- (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.

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

**Commencement Information**

**I7** [S. 8](#) wholly in force at 1.1.1992 see [s. 9\(2\)](#) and [S.I. 1991/2488, art. 2](#).

**9 Short title, commencement and extent.** **E+W**

- (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.

**Subordinate Legislation Made**

**P1** [S. 9\(2\)](#): power exercised (31.10.1991) by [S.I.1991/2488](#).

**Commencement Information**

**I8** [S. 9](#) wholly in force at 1.1.1992 see [s. 9\(2\)](#) and [S.I. 1991/2488, art. 2](#).

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## SCHEDULES

### F6 SCHEDULE 1 E+W

Section 5(1).

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**Textual Amendments**

**F6** Sch. 1 repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), [ss. 24\(5\)](#), 60 (with [Sch. 12 para. 8](#)); [S.I. 2005/579](#), art. 3(b)

### F7 SCHEDULE 2 E+W

Section 5(3).

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**Textual Amendments**

**F7** Sch. 2 repealed (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), [ss. 24\(5\)](#), 60, [Sch. 11](#) (with [Sch. 12 para. 8](#)); [S.I. 2005/579](#), art. 3(b)

### SCHEDULE 3 E+W

Section 7.

#### MINOR AND CONSEQUENTIAL AMENDMENTS

- 1 (1) In subsection (2) of section 8 of the 1964 Act (short title, interpretation etc.), immediately before the definition of “special verdict” there shall be inserted the following definitions—

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

“registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983;”.

- (2) After that subsection there shall be inserted the following subsection—

“(2A) Subsections (2) and (3) of section 54 of the Mental Health Act 1983 shall have effect with respect to proof of the accused’s mental condition for the purposes of section 4 of this Act 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.”



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**Commencement Information**

**I9** Sch. 3 para. 1 wholly in force at 1.1.1992 see s. 9(2) and S.I. 1991/2488, art. 2.

- 2 In section 15(1) of the 1968 Act (right of appeal against finding of disability), for the words from “a finding” to the end there shall be substituted the words “ findings that he is under a disability and that he did the act or made the omission charged against him, the person may appeal to the Court of Appeal against either or both of those findings ”.

**Commencement Information**

**I10** Sch. 3 para. 2 wholly in force at 1.1.1992 see s. 9(2) and S.I. 1991/2488, art. 2.

- 3 <sup>F8</sup>(1) . . . . .
- (2) Subsection (2) of that section shall cease to have effect.
- (3) For subsection (3) of that section there shall be substituted the following subsections—
- “(3) Where the Court of Appeal allow an appeal under section 15 of this Act against a finding that the appellant is under a disability—
- (a) the appellant may be tried accordingly for the offence with which he was charged; and
- (b) the Court may make such orders as appear to them necessary or expedient pending any such trial for his custody, release on bail or continued detention under the Mental Health Act 1983;
- and Schedule 3 to this Act has effect for applying provisions in Part III of that Act to persons in whose case an order is made by the Court under this subsection.
- (4) Where, otherwise than in a case falling within subsection (3) above, the Court of Appeal allow an appeal under section 15 of this Act against a finding that the appellant did the act or made the omission charged against him, the Court shall, in addition to quashing the finding, direct a verdict of acquittal to be recorded (but not a verdict of not guilty by reason of insanity).”

**Textual Amendments**

**F8** Sch. 3 para. 3(1) repealed (1.1.1996) by 1995 c. 35, s. 29(2), Sch. 3; S.I. 1995/3061, art. 3(d)(i)(viii)

**Commencement Information**

**I11** Sch. 3 para. 3 wholly in force at 1.1.1992 see s. 9(2) and S.I. 1991/2488, art. 2.

- <sup>F9</sup>4 . . . . .

**Textual Amendments**

**F9** Sch. 3 para. 4 repealed (31.3.1997) by 1995 c. 35, s. 29(2), Sch. 3; S.I. 1997/402, art. 3(f)

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- 5 (1) In subsection (1) of section 51 of the 1968 Act (interpretation)—
- (a) after the definition of “the defendant” there shall be inserted the following definition—
- ““duly approved”, in relation to a registered medical practitioner, means approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder;”;
- (b) after the definition of “the judge of the court of trial” there shall be inserted the following definition—
- ““registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983;”.
- (2) After subsection (2) of that section there shall be inserted the following subsection—
- “(2A) Subsections (2) and (3) of section 54 of the Mental Health Act 1983 shall have effect with respect to proof of the appellant’s mental condition for the purposes of section 6, 14 or 14A of this Act 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.”

**Commencement Information**

**I12** Sch. 3 para. 5 wholly in force at 1.1.1992 see s. 9(2) and S.I. 1991/2488, art. 2.

- 6 In section 81(1A) of the <sup>F10</sup>Senior Courts Act 1981] (bail), for the words “finding of disability” there shall be substituted the words “ findings that the accused is under a disability and that he did the act or made the omission charged against him ”.

**Textual Amendments**

**F10** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 11 para. 1\(2\)](#); S.I. 2009/1604, art. 2(d)

**Commencement Information**

**I13** Sch. 3 para. 6 wholly in force at 1.1.1992 see s. 9(2) and S.I. 1991/2488, art. 2.

- 7 In section 16(4)(a) of the <sup>M8</sup>Prosecution of Offences Act 1985 (defence costs), for sub-paragraph (iii) there shall be substituted the following sub-paragraph—
- “(iii) a finding under the Criminal Procedure (Insanity) Act 1964 that the appellant is under a disability, or that he did the act or made the omission charged against him;”.

**Commencement Information**

**I14** Sch. 3 para. 7 wholly in force at 1.1.1992 see s. 9(2) and S.I. 1991/2488, art. 2.

**Marginal Citations**

**M8** 1985 c. 23.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991. (See end of Document for details)*

8 In section 19(3) of the Prosecution of Offences Act 1985 (provision for orders as to costs in other circumstances), after paragraph (c) there shall be inserted the following paragraph—

“(d) to cover the proper fee or costs of a person appointed by the Crown Court under section 4A of the Criminal Procedure (Insanity) Act 1964 to put the case for the defence.”

**Commencement Information**

**I15** Sch. 3 para. 8 wholly in force at 1.1.1992 see s. 9(2) and S.I. 1991/2488, art. 2.

SCHEDULE 4 **E+W**

Section 8(3).

REPEALS

**Commencement Information**

**I16** Sch. 4 wholly in force at 1.1.1992 see s. 9(2) and S.I. 1991/2488, art. 2.

Chapter	Short title	Extent of repeal
1964 c. 84.	The Criminal Procedure (Insanity) Act 1964.	In section 8(2), the words from “and references” to the end.Schedule 1.
1968 c. 19.	The Criminal Appeal Act 1968.	In section 16, in subsection (1), the words “(except one to which subsection (2) below applies)”, and subsection (2).Schedule 1.In Schedule 5, in Part I, the entry relating to Schedule 1 to the Criminal Procedure (Insanity) Act 1964.
1976 c. 63.	The Bail Act 1976.	In Schedule 2, paragraph 39.
1982 c. 51.	The Mental Health (Amendment) Act 1982.	In Schedule 3, paragraph 38.
1983 c. 20.	The Mental Health Act 1983.	In Schedule 4, paragraph 18(b) and, in paragraph 23, paragraphs (a), (e), (f) and (k) to (m).

**Status:**

Point in time view as at 01/04/2013.

**Changes to legislation:**

There are currently no known outstanding effects for the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991.