

DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Criminal Justice

Section 24: Powers of court on finding of insanity or unfitness to plead etc.

88. *Section 24* provides a new range of disposals for the court when it has made a finding of unfitness to plead and that the defendant did the act charged or has found the defendant not guilty by reason of insanity under the Criminal Procedure (Insanity) Act 1964. They allow for the defendant to receive treatment and support if the court thinks that this is appropriate.
89. *Subsection (1)* substitutes a new section 5 and inserts a new section 5A of the Criminal Procedure (Insanity) Act 1964. The new section 5 sets out the court's options on a finding of unfitness or insanity. The court has three options. The first option is to make a hospital order under section 37 of the Mental Health Act 1983 (which can also be accompanied by a restriction order under section 41 of that Act). The second option is to make a supervision order and the third option is to order the defendant's absolute discharge.
90. If the court wishes the defendant to be detained in hospital, the appropriate order will be a hospital order. To make a hospital order, the court must have the evidence required by the 1983 Act: that the defendant is mentally disordered and requires specialist medical treatment. This means that there must be medical evidence that justifies his detention on grounds of his mental state. The making of a restriction order alongside a hospital order gives the Secretary of State certain powers in relation to the management of the defendant in hospital, such as the requirement that the Secretary of State consent to the defendant being given leave or discharged. Restriction orders are made in cases where the defendant poses a risk to the public (see section 41(1) of the 1983 Act). The power of the court to make a hospital order and a restriction order under the 1983 Act represents a change from the current position, whereby the court makes an order for the defendant's admission to hospital under Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, without any requirement to hear medical evidence, and specifies whether it thinks restrictions are appropriate. Once the court has made an admission order, the Secretary of State has two months to issue a warrant for the defendant's admission to hospital. The defendant is then treated for the purposes of his management in hospital as if he had been given a hospital order (and if appropriate a restriction order) under the 1983 Act.
91. The two principal differences under the new system will be that the Secretary of State no longer has a role in deciding whether or not the defendant is admitted to hospital and that a court can no longer order the defendant's admission to a psychiatric hospital without any medical evidence.

*These notes refer to the Domestic Violence, Crime and Victims Act
2004 (c.28) which received Royal Assent on 15 November 2004*

92. Existing provision in section 5(3) of the 1964 Act and paragraph 2(2) of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 requires the court to admit the defendant to hospital subject to restrictions where he was charged with an offence for which the sentence is fixed by law (i.e. murder). The new section 5 does the same but the court is only obliged to make a hospital order with a restriction order on a charge of murder if the conditions for making a hospital order are met. If the conditions are not met, for example if the reason for the finding of unfitness to plead related to a physical disorder, the court has the option of making one of the other orders.
93. The new section 5A makes provision about the detail of these orders. Subsections (1) and (3) of new section 5A modify the 1983 Act so that the provisions on hospital orders (which are normally given after conviction of an offence) apply equally to those given a hospital order following a finding of unfitness or insanity. The one difference is that a court will be able to require a hospital to admit a person found unfit to plead or not guilty by reason of insanity, whereas it has no such power in respect of those convicted of an offence.
94. Subsection (2) of new section 5A extends the powers under the 1983 Act to remand an accused person to hospital for a report or treatment and to make an interim hospital order so that the court can exercise these powers where a person has been found unfit to plead or not guilty by reason of insanity and the court is considering which disposal would be appropriate.
95. Subsection (4) of new section 5A replicates existing provision in paragraph 4 of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 and allows the Secretary of State to remit for trial a person who is found unfit to plead and given a hospital order with a restriction order and who subsequently recovers.
96. Subsection (5) of new section 5A introduces a new Schedule 1A to the 1964 Act, which makes provision about the supervision order. The new Schedule 1A is inserted by *subsection (2) of section 24* and *Schedule 2* to the Act. The supervision order will replace the existing supervision and treatment order, provision for which is made in Schedule 2 to the 1991 Act. The new supervision order differs from the old supervision and treatment order in that it enables treatment to be given under supervision for physical as well as mental disorder and in that it cannot include a requirement for a person to receive treatment as an in-patient. It is designed to enable support and treatment to be given to the defendant to prevent recurrence of the problem which led to the offending. There is no sanction for breach of either the new supervision order or the existing supervision and treatment order; the orders simply provide a framework for treatment.
97. Subsection (6) of new section 5A applies the provision on absolute discharge in section 12 the Powers of Criminal Courts (Sentencing) Act 2000 to the case where a defendant is given an absolute discharge following a finding of unfitness or insanity.
98. *Subsection (3) of section 24* makes the same changes to the disposals available to the Court of Appeal when substituting a finding of insanity or unfitness to plead for another finding. *Subsection (4) of section 24* removes the power of the Court of Appeal to order a person's admission to hospital where it substitutes a verdict of acquittal for a verdict of not guilty by reason of insanity and there is medical evidence that the person is mentally disordered. It will still be possible to admit such a person to hospital under the civil powers in the 1983 Act.
99. *Subsection (5) of Section 24* repeals the provisions of the 1964 and 1991 Acts which are being replaced.