



Domestic Violence, Crime and Victims Act 2004

2004 CHAPTER 28

PART 2

CRIMINAL JUSTICE

Unfitness to plead and insanity

22 Procedure for determining fitness to plead: England and Wales

- (1) The Criminal Procedure (Insanity) Act 1964 is amended as follows.
- (2) In section 4 (finding of unfitness to plead), in subsection (5) (question of fitness to be determined by a jury), for the words from “by a jury” to the end substitute “ by the court without a jury ”.
- (3) In subsection (6) of that section, for “A jury” substitute “ The court ”.
- (4) In subsection (1) of section 4A (finding that the accused did the act or omission charged against him), for “jury” substitute “ court ”.
- (5) For subsection (5) of that section substitute—

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

23 Procedure for determining fitness to be tried: Northern Ireland

- (1) The Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) is amended as follows.

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- (2) In Article 49 (finding of unfitness to be tried), in paragraph (4) (question of fitness to be determined by a jury), for the words from “by a jury” to the end substitute “ by the court without a jury ”.
- (3) In paragraph (4A) of that Article, for “A jury” substitute “ The court ”.
- (4) In paragraph (1) of Article 49A (finding that the accused did the act or omission charged against him), for “jury” substitute “ court ”.
- (5) For paragraph (5) of that Article substitute—
 - “(5) Where the question of fitness to be tried was determined after arraignment of the accused, the determination under paragraph (2) is to be made by the jury by whom he was being tried.”

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

- (1) For section 5 of the Criminal Procedure (Insanity) Act 1964 (c. 84) substitute—

“5 Powers to deal with persons not guilty by reason of insanity or unfit to plead etc.

- (1) This section applies where—
 - (a) a special verdict is returned that the accused is not guilty by reason of insanity; or
 - (b) findings have been made that the accused is under a disability and that he did the act or made the omission charged against him.
- (2) The court shall make in respect of the accused—
 - (a) a hospital order (with or without a restriction order);
 - (b) a supervision order; or
 - (c) an order for his absolute discharge.
- (3) Where—
 - (a) the offence to which the special verdict or the findings relate is an offence the sentence for which is fixed by law, and
 - (b) the court have power to make a hospital order,
 the court shall make a hospital order with a restriction order (whether or not they would have power to make a restriction order apart from this subsection).
- (4) In this section—
 - “hospital order” has the meaning given in section 37 of the Mental Health Act 1983;
 - “restriction order” has the meaning given to it by section 41 of that Act;
 - “supervision order” has the meaning given in Part 1 of Schedule 1A to this Act.

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5A Orders made under or by virtue of section 5

- (1) In relation to the making of an order by virtue of subsection (2)(a) of section 5 above, section 37 (hospital orders etc) of the Mental Health Act 1983 (“the 1983 Act”) shall have effect as if—
 - (a) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 5 above applies;
 - (b) the words after “punishable with imprisonment” and before “or is convicted” were omitted; and
 - (c) for subsections (4) and (5) there were substituted—

“(4) Where an order is made under this section requiring a person to be admitted to a hospital (“a hospital order”), it shall be the duty of the managers of the hospital specified in the order to admit him in accordance with it.”
- (2) In relation to a case where section 5 above applies but the court have not yet made one of the disposals mentioned in subsection (2) of that section—
 - (a) section 35 of the 1983 Act (remand to hospital for report on accused’s mental condition) shall have effect with the omission of the words after paragraph (b) in subsection (3);
 - (b) section 36 of that Act (remand of accused person to hospital for treatment) shall have effect with the omission of the words “(other than an offence the sentence for which is fixed by law)” in subsection (2);
 - (c) references in sections 35 and 36 of that Act to an accused person shall be construed as including a person in whose case this subsection applies; and
 - (d) section 38 of that Act (interim hospital orders) shall have effect as if—
 - (i) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 5 above applies; and
 - (ii) the words “(other than an offence the sentence for which is fixed by law)” in that subsection were omitted.
- (3) In relation to the making of any order under the 1983 Act by virtue of this Act, references in the 1983 Act to an offender shall be construed as including references to a person in whose case section 5 above applies, and references to an offence shall be construed accordingly.
- (4) Where—
 - (a) a person is detained in pursuance of a hospital order which the court had power to make by virtue of section 5(1)(b) above, and
 - (b) the court also made a restriction order, and that order has not ceased to have effect,the Secretary of State, if satisfied after consultation with the responsible medical officer that the person can properly be tried, may remit the person for trial, either to the court of trial or to a prison.

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On the person's arrival at the court or prison, the hospital order and the restriction order shall cease to have effect.

- (5) Schedule 1A to this Act (supervision orders) has effect with respect to the making of supervision orders under subsection (2)(b) of section 5 above, and with respect to the revocation and amendment of such orders.
- (6) In relation to the making of an order under subsection (2)(c) of section 5 above, section 12(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (absolute and conditional discharge) shall have effect as if—
 - (a) the reference to a person being convicted by or before a court of such an offence as is there mentioned included a reference to the case where section 5 above applies; and
 - (b) the reference to the court being of opinion that it is inexpedient to inflict punishment included a reference to it thinking that an order for absolute discharge would be most suitable in all the circumstances of the case.”
- (2) Before Schedule 2 to the Criminal Procedure (Insanity) Act 1964 (c. 84) insert the Schedule set out in Schedule 2 to this Act.
- (3) In section 6 of the Criminal Appeal Act 1968 (c. 19) (substitution of finding of insanity or findings of unfitness to plead etc) and in section 14 of that Act (substitution of findings of unfitness to plead etc), for subsections (2) and (3) substitute—
 - “(2) The Court of Appeal shall make in respect of the accused—
 - (a) a hospital order (with or without a restriction order);
 - (b) a supervision order; or
 - (c) an order for his absolute discharge.
 - (3) Where—
 - (a) the offence to which the appeal relates is an offence the sentence for which is fixed by law, and
 - (b) the court have power to make a hospital order,
 the court shall make a hospital order with a restriction order (whether or not they would have power to make a restriction order apart from this subsection).
- (4) Section 5A of the Criminal Procedure (Insanity) Act 1964 (“the 1964 Act”) applies in relation to this section as it applies in relation to section 5 of that Act.
- (5) Where the Court of Appeal make an interim hospital order by virtue of this section—
 - (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the court below and not by the Court of Appeal; and
 - (b) the court below shall be treated for the purposes of section 38(7) of the Mental Health Act 1983 (absconding offenders) as the court that made the order.
- (6) Where the Court of Appeal make a supervision order by virtue of this section, any power of revoking or amending it shall be exercisable as if the order had been made by the court below.
- (7) In this section—

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“hospital order” has the meaning given in section 37 of the Mental Health Act 1983;

“interim hospital order” has the meaning given in section 38 of that Act;

“restriction order” has the meaning given to it by section 41 of that Act;

“supervision order” has the meaning given in Part 1 of Schedule 1A to the 1964 Act.”

- (4) Section 14A of the Criminal Appeal Act 1968 (c. 19) (power to order admission to hospital where, on appeal against verdict of not guilty by reason of insanity, Court of Appeal substitutes verdict of acquittal) is repealed.
- (5) Section 5 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25) and Schedules 1 and 2 to that Act are repealed.

25 Appeal against order made on finding of insanity or unfitness to plead etc

After section 16 of the Criminal Appeal Act 1968 insert—

“Appeal against order made in cases of insanity or unfitness to plead

16A Right of appeal against hospital order etc.

- (1) A person in whose case the Crown Court—
 - (a) makes a hospital order or interim hospital order by virtue of section 5 or 5A of the Criminal Procedure (Insanity) Act 1964, or
 - (b) makes a supervision order under section 5 of that Act,may appeal to the Court of Appeal against the order.
- (2) An appeal under this section lies only—
 - (a) with the leave of the Court of Appeal; or
 - (b) if the judge of the court of trial grants a certificate that the case is fit for appeal.

16B Disposal of appeal under s. 16A

- (1) If on an appeal under section 16A of this Act the Court of Appeal consider that the appellant should be dealt with differently from the way in which the court below dealt with him—
 - (a) they may quash any order which is the subject of the appeal; and
 - (b) they may make such order, whether by substitution for the original order or by variation of or addition to it, as they think appropriate for the case and as the court below had power to make.
- (2) The fact that an appeal is pending against an interim hospital order under the Mental Health Act 1983 shall not affect the power of the court below to renew or terminate the order or deal with the appellant on its termination.
- (3) Where the Court of Appeal make an interim hospital order by virtue of this section—

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- (a) the power of renewing or terminating it and of dealing with the appellant on its termination shall be exercisable by the court below and not by the Court of Appeal; and
 - (b) the court below shall be treated for the purposes of section 38(7) of the said Act of 1983 (absconding offenders) as the court that made the order.
- (4) The fact that an appeal is pending against a supervision order under section 5 of the Criminal Procedure (Insanity) Act 1964 shall not affect the power of the court below to revoke the order, or of a magistrates' court to revoke or amend it.
- (5) Where the Court of Appeal make a supervision order by virtue of this section, the power of revoking or amending it shall be exercisable as if the order had been made by the court below.”

26 Courts-martial etc

Schedule 3 (unfitness to stand trial and insanity: courts-martial etc) has effect.

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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):

- Sch. 9 para. 26A inserted by [2015 c. 2 Sch. 3 para. 12](#)