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Keynotes

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

This short Act, which amends some parts of the Criminal Procedure (Insanity) Act 1964, came into force on 1 January 1992. It applies only to cases where arraignment was after that date (start of trial when charge[s] is read to the defendant), and only in the Crown and higher Courts. It enables Courts to try the facts of a case even when the defendant is "Under Disability" (= Unfit to Plead) and, when finding a person "Under Disability" or "Not Guilty by Reason of Insanity", to order other disposals than indefinite detention in hospital. The legal definitions remain unchanged.

The provisions in cases where the patient's fitness to plead is questioned allow for the facts to be tried separately and if it is not found that he or she committed the act or omissions concerned, he or she must be aquitted. The alternative disposals include: (1) an Admission (Hospital) Order with or without Restrictions on Discharge or (2) a Guardianship Order; (3) a Supervision and Treatment Order; and (4) an Absolute Discharge. Only in cases where the original charge was murder does an automatic Admission Order with Restriction on Discharge without limit of time have to be imposed.

In more detail, Section 1 of the 1991 Act provides that a jury is not to return a verdict of not guilty by reason of insanity except on the evidence of two or more medical practitioners, one of whom must be approved under Section 12.2 of the Mental Health Act 1983. Surprisingly, there has been no such requirement until now.

Section 2 provides for a trial of the facts of the case where the defendant's fitness to plead is questioned. Fitness to plead and the facts of the case may be tried by separate juries. The question of fitness to plead can be considered at any time up to the opening of the defence case. Again evidence from two medical practitioners, one of whom is approved under Section 12.2 of the Mental Health Act 1983, is now required. The provisions in cases where the patient's fitness to plead is questioned allow for the facts to be tried separately and if it is not found that he committed the act or omissions concerned he has to be acquitted without the question of disability being raised. The trial of facts is not expected to consider intent. Finally, the court is now required to ensure the defendant's legal representation for this section of the trial by the person it considers most appropriate, whatever the defendant's wishes.

Section 3 deals with the new disposals available for any defendant found not guilty by reason of insanity or unfit to plead, providing the original charge was not one for which the penalty is fixed by law, i.e., murder. (In a case when the charge was murder a Hospital Order with Restrictions 'without limit of time' is mandatory).

The possibilities now available include the making of a Hospital Order, now called an Admission Order, by which the patient will be transferred within two months to such hospital as the Secretary of State may specify with or without restrictions on discharge or a Guardianship Order, both only if the conditions in the Mental Health Act 1983 are met; and a Supervision and Treatment Order which includes supervision by Probation or Social Services and if appropriate medical treatment as directed by a specified medical practitioner or an Order for Absolute Discharge.

Section 4 gives powers to the Appeal Courts, when they find it appropriate, to substitute verdicts of "not guilty by reason of insanity" or "unfitness to plead" and then to make the same Orders as in Section 3.

If the Court of Appeal substitutes a verdict of acquittal, the Court can make an Order committing the patient to hospital for assessment if the appellant is suffering from mental disorder which warrants detention in hospital for assessment and/or treatment for at least a limited period and he ought to be detained in the interests of his own health or safety or with a view to the protection of other persons (i.e., the conditions required Section 2 of the Mental Health Act 1983). This power does not appear to be available to any lower courts. An appeal can be permitted also by the Secretary of State against a finding of unfitness to plead.

Section 5 deals with Orders for admission to hospital; further details are set out in schedule 1. These may be made by the Crown Court or the Court of Appeal and provide for the patient's transfer to and detention in either a National Health Service Hospital or a private Mental Nursing Home. The schedule also provides, where the offence charged is not murder, for the Court to make an additional Order restricting his discharge for either a limited

period or without limit of time. If no Restriction Order is made, the patient is treated as if he has been admitted on the day the Admission Order was made.

There are also provisions for the patient to be remitted to Court for trial if the Secretary of State subsequently becomes satisfied, after consultation with the responsible medical officer, that the patient is now fit to be tried.

Schedule II deals with the Supervision and Treatment orders which are to be made where the accused's condition requires and may be susceptible to treatment but is not such as to warrant the making of an Admission Order. The court must also be satisfied that the supervising officer, to be specified in the Order, is willing to undertake the supervision and that arrangements have been made for the treatment concerned. The supervising officer can be provided either by the local Social Services authority or the Probation Service.

It requires the Court to explain to the defendant in ordinary language the effect of the Order and the fact that a Magistrates' Court has power to review the Order on either the application of the defendant or the supervising officer.

The Act does not state that the patient has to consent to the order being made but as there are no powers by which it may be enforced it will probably not be used often when the defendant appears unwilling to cooperate. Equally the usual requirement for the patient's informed consent to the proposed treatment is not altered.

The treatment specified can include treatment as a resident patient in a hospital or mental nursing home, treatment as a non resident patient or treatment by or under the direction of a registered medical practitioner. The Order is limited to two years and if the patient fails to co-operate there is nothing that can be done other than for the Order to be cancelled.

Sections 6, 7 and 8 are technical legal provisions which are not of concern to medical practitioners.

The effect of this Act is likely to be that findings of unfitness to plead and verdicts of not guilty by reason of insanity will be much more frequently sought by the defence in all cases except murder where the special defences of diminished responsibility or provocation, reducing the offence to manslaughter, will remain the option most attractive to the defence.

In practice, most of these cases were probably dealt with in other ways with much the same results as are now envisaged although there should be a modest increase in the demand for hospital facilities and admissions. It would seem probable there will also be a modest increase in demand for expert medical evidence in Court.

The continued use of section 36 of the Mental Health Act by the Crown Courts remains encouraged as preferable to a finding of "unfit to plead".

The old problem of the defence only wanting to suggest a non insane but not an insane automatism should, however, be removed. The Act has therefore introduced flexibility and common sense into an area which caused much vexed discussion between lawyers and psychiatrists and should be greatly to the benefit of mentally disturbed offenders.

NB: It is helpful to note that sections 2, 3 & 4 of the 1991 Act replace respectively sections 4 & 4A, 5, and 6 & 14 of the Criminal Procedure (Insanity) Act 1964, and are therefore numbered and often referred to as if they were sections of that act.

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