



Criminal Procedure (Insanity) Act 1964

CHAPTER 84

ARRANGEMENT OF SECTIONS

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ELIZABETH II



1964 CHAPTER 84

An Act to amend the form of the special verdict required by section 2 of the Trial of Lunatics Act 1883 and the procedure for determining whether an accused person is under a disability such as to constitute a bar to his being tried; to provide for an appeal against such a special verdict or a finding that the accused is under such a disability; to confer on the court of trial and the Court of Criminal Appeal further powers of making orders for admission to hospital; to empower the prosecution to put forward evidence of insanity or diminished responsibility; and for purposes connected with the matters aforesaid. [31st July 1964]

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. The special verdict required by section 2 of the Trial of Lunatics Act 1883 (hereinafter referred to as a "special verdict") shall be that the accused is not guilty by reason of insanity; and accordingly in subsection (1) of that section for the words from "a special verdict" to the end there shall be substituted the words "a special verdict that the accused is not guilty by reason of insanity".

Acquittal
on grounds
of insanity.

2.—(1) A person in whose case a special verdict is returned may appeal against the verdict to the Court of Criminal Appeal—

Appeal
against special
verdict.

- (a) on any ground of appeal which involves a question of law alone, and
- (b) with the leave of the Court of Criminal Appeal or upon the certificate of the judge or chairman of the court before which he came for trial that it is a fit case for appeal, on any ground of appeal which

involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the court to be a sufficient ground of appeal ;

and the Court of Criminal Appeal on any such appeal shall subject as hereinafter provided allow the appeal if they think that the special verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the order of the court giving effect to the special verdict should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and shall in any other case dismiss the appeal.

(2) The Court of Criminal Appeal may dismiss an appeal against a special verdict if of opinion that notwithstanding that the point raised in the appeal might be decided in favour of the appellant no substantial miscarriage of justice has actually occurred.

(3) Where apart from this subsection—

(a) an appeal against a special verdict would fall to be allowed, and

(b) none of the grounds for allowing it relates to the question of the insanity of the accused,

the Court of Criminal Appeal may dismiss the appeal if of opinion that but for the insanity of the accused the proper verdict would have been that he was guilty of an offence other than the offence charged.

(4) This and the next following section shall be construed as one with the Criminal Appeal Act 1907 ; and—

(a) references in sections 7, 8, 15(2), 18(1), 19, and 20(2) of that Act, and in the definition of “appellant” in section 21 thereof, to a person’s being convicted shall include references to his being the subject of a special verdict ;

(b) the reference in section 11 of that Act to a person’s being in custody shall not include a reference to his being in custody in consequence of a special verdict.

Supplementary provisions where appeal against special verdict allowed.

3.—(1) Where in accordance with the foregoing section an appeal against a special verdict is allowed :—

(a) if the ground, or one of the grounds, for allowing the appeal is that the finding of the jury as to the insanity of the accused ought not to stand and the Court of Criminal Appeal are of opinion that the proper verdict would have been that he was guilty of an offence (whether the offence charged or any other offence of which the jury could have found him guilty), the court shall substitute for the special verdict a verdict of guilty of that offence, and shall have the like powers

of punishing or otherwise dealing with the accused and other powers as the court before which he was tried would have had if the jury had come to the substituted verdict ;

- (b) in any other case, the Court of Criminal Appeal shall substitute for the verdict of the jury a verdict of acquittal :

Provided that where the offence mentioned in paragraph (a) is one for which the sentence is fixed by law, the sentence shall (whatever the circumstances) be one of imprisonment for life.

(2) The term of any sentence passed by the Court of Criminal Appeal in the exercise of the powers conferred by subsection (1)(a) of this section shall, unless the court otherwise direct, begin to run from the time when it would have begun to run if passed in the proceedings in the court before which the accused was tried.

In relation to a person sentenced to Borstal training, the reference in this subsection to the term of a sentence shall be construed as a reference to the periods during which, under the Prison Act 1952, he may be detained in a Borstal institution.

4.—(1) Where on the trial of a person the question arises Unfitness to (at the instance of the defence or otherwise) whether the accused is under disability, that is to say under any disability such that apart from this Act it would constitute a bar to his being tried, the following provisions shall have effect.

(2) The court, if having regard to the nature of the supposed disability the court are of opinion that it is expedient so to do and in the interests of the accused, may postpone consideration of the said question (hereinafter referred to as "the question of fitness to be tried") until any time up to the opening of the case for the defence, and 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.

(3) Subject to the foregoing subsection, the question of fitness to be tried shall be determined as soon as it arises.

(4) 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, then if 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.

(5) Where in accordance with subsection (2) or (3) of this section it is determined that the accused is under disability, the trial shall not proceed or further proceed.

(6) For the purpose of providing an appeal against a finding of the jury that the accused is under disability, section 2 of this Act (except subsection (3)) shall apply as if references to a special verdict included references to such a finding; and—

- (a) where the question of fitness to be tried was determined later than on arraignment, an appeal under section 2 of this Act against a finding that the accused was under disability may be allowed (notwithstanding that the finding was properly come to) if the Court of Criminal Appeal are of opinion that the case is one in which the accused should have been acquitted before the question of fitness to be tried was considered,
- (b) if the court are of that opinion, the court shall, in addition to quashing the finding, direct a verdict of acquittal to be recorded,
- (c) subject to paragraph (b) above, where an appeal is allowed against a finding that the accused is under disability, the appellant may be tried accordingly for the offence with which he was charged, and the court may make such orders as appear to the court to be necessary or expedient pending any such trial for his custody, admission to bail or continued detention under the Mental Health Act 1959.

(7) Sections 73, 74 and 76 of the Mental Health Act 1959 (which provide for the removal to or from hospital of persons committed for trial, etc.) shall apply to persons ordered under subsection (6)(c) of this section to be kept in custody pending trial as those sections apply to persons described in subsection (2)(a) to (c) of section 73, and Part V of that Act shall apply to persons for whose continued detention under the Act an order is made under subsection (6)(c) of this section as if they had been so ordered to be kept in custody pending trial and were detained in pursuance of a transfer direction together with a direction restricting discharge; and in the said section 76—

- (a) the words “the court having jurisdiction to try or otherwise deal with him” shall be substituted in subsection (1) for the words “the court to which he was committed or by which he was remanded, as the case may be,” and in subsection (2)(a) for the words “the court to which he was committed or by which he was remanded”; and
- (b) the words “a person awaiting trial” shall be substituted in subsection (2)(b) for the words “a person committed for trial”.

5.—(1) Where—

- (a) a special verdict is returned, or
- (b) on an appeal against conviction the Court of Criminal Appeal are of opinion that the proper verdict would have been a special verdict, or
- (c) a finding is recorded that the accused is under disability, or
- (d) on an appeal against conviction or against a special verdict the Court of Criminal Appeal are of opinion that the case is not one where there should have been a verdict of acquittal, but that there should have been a finding that the accused was under disability,

Orders for
admission
to hospital.

the court shall make an order that the accused be admitted to such hospital as may be specified by the Secretary of State.

(2) Subject to the foregoing subsection, where in accordance with section 3(1)(b) of this Act the Court of Criminal Appeal substitute a verdict of acquittal, and the court are of opinion—

- (a) that the appellant is suffering from mental disorder of a nature or degree which warrants his detention in a hospital under observation (with or without other 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,

the court shall make an order that the appellant be admitted for observation to such hospital as may be specified by the Secretary of State.

(3) The provisions in that behalf of Schedule 1 to this Act shall have effect in relation to orders for admission to hospital made under this section.

(4) Subject to the provisions of the said Schedule, if while a person is detained in pursuance of an order under paragraph (c) of subsection (1) of this section the Secretary of State, after consultation with the responsible medical officer, is satisfied that the said person can properly be tried, the Secretary of State may remit that person to prison, or to a remand centre provided under section 43 of the Prison Act 1952, for trial at the next quarter sessions, or as the case may be assizes, for the place where but for the order he would have been tried; and on his arrival at the prison or remand centre the order under subsection (1)(c) shall cease to have effect.

In relation to persons ordered under section 2 of the Criminal Lunatics Act 1800 to be kept in custody this subsection and paragraph 2(2) of Schedule 1 to this Act shall apply as if the order were an order under subsection (1)(c) of this section.

(5) In section 72(6)(a) of the Mental Health Act 1959 (removal to hospital of persons detained under orders made in criminal proceedings) the exception for an order under an enactment to which section 71 of that Act applies shall extend to orders under subsection (1) of this section; and in section 5(4) of the Administration of Justice Act 1960 (interim detention of respondent pending appeal to House of Lords) any reference to an order or direction under Part V of the Mental Health Act 1959 shall include a reference to an order under subsection (1)(a) or (c) of this section.

Evidence by prosecution of insanity or diminished responsibility.

6. Where on a trial for murder the accused contends—

- (a) that at the time of the alleged offence he was insane so as not to be responsible according to law for his actions; or
- (b) that at that time he was suffering from such abnormality of mind as is specified in subsection (1) of section 2 of the Homicide Act 1957 (diminished responsibility),

the court shall allow the prosecution to adduce or elicit evidence tending to prove the other of those contentions, and may give directions as to the stage of the proceedings at which the prosecution may adduce such evidence.

Courts-martial.

7. In the Army Act 1955 and the Air Force Act 1955, in the Naval Discipline Act 1957 and in the Courts-Martial (Appeals) Act 1951 there shall be made at the places mentioned in the first column in Parts I, II and III respectively of Schedule 2 to this Act the amendments provided for by that Schedule (being amendments designed to make in relation to courts-martial provision similar to sections 1 to 5 of this Act).

Short title, interpretation, commencement, extent and repeals.

8.—(1) This Act may be cited as the Criminal Procedure (Insanity) Act 1964.

(2) In this Act—

- “special verdict” has the meaning assigned by section 1 of this Act,
- “under disability” has the meaning assigned by section 4 of this Act,
- “verdict of acquittal” does not include a special verdict, and any reference to acquittal shall be construed accordingly,

and other expressions used in this Act and in the Mental Health Act 1959 have the same meanings in this Act as in Part V of that Act; and references to that Act in sections 139 to 141 thereof shall include references to Schedule 1 to this Act.

(3) This Act shall come into operation at the time of expiration of a period of one month beginning with the day on which it was passed:

Provided that—

- (a) sections 1, 4(1) to (5), 5(1)(a) and (c) and 6 shall not apply where the accused was arraigned before the said time ;
 - (b) sections 2, 4(6) and 5(1)(b) and (d) shall apply whenever the accused was arraigned, but section 2 shall not apply where a special verdict was returned before the said time, section 4 (6) where a finding that the accused is under disability was recorded before that time, or section 5(1)(b) or (d) where the hearing of the appeal began before that time ;
 - (c) section 7 shall apply in relation to courts-martial whenever commenced, except that it shall not have effect in relation to any finding come to by a court-martial before the said time or affect the procedure in a court-martial commenced before that time for determining the question whether the accused is unfit to stand his trial.
- (4) This Act, except as respects courts-martial and matters arising out of proceedings in courts-martial, shall extend to England and Wales only.
- (5) The following provisions are hereby repealed subject to any exception mentioned, that is to say :—
- (a) the Criminal Lunatics Act 1800 and subsections (2) and (4) of section 2 of the Trial of Lunatics Act 1883 shall be repealed except as respects cases where the accused was arraigned before the time mentioned in subsection (3) of this section ; and
 - (b) section 5(4) of the Criminal Appeal Act 1907 shall be repealed except as respects appeals the hearing of which began before the said time ; and
 - (c) in section 71 of the Mental Health Act 1959 subsection (1) and in subsection (3) the words from the beginning to “ Criminal Appeal Act 1907 ; and ”, together with the words “ the aforementioned enactments and ”, shall be repealed except as respects cases where an order was made before the said time, and subsection (5) shall be repealed ; and
 - (d) in paragraph 15(2) of Schedule 2 to the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955 the words from “ in subsection (4) ” to “ finding ; and ”, and in Schedule 5 to the Naval Discipline Act 1957 the words from “ In section six ” to “ 1957 ” where next occurring, shall be repealed except as respects cases where the finding of the court-martial was come to before the said time.

SCHEDULES

SCHEDULE 1

EFFECT OF ORDERS FOR ADMISSION TO HOSPITAL

Section 5.

1.—(1) An order for admission to hospital under subsection (1) or (2) of section 5 of this Act shall be sufficient authority for any person acting under the authority of the Secretary of State to take the person to whom the order relates and convey him at any time within the period of two months, in the case of an order under the said subsection (1), or seven days, in the case of an order under the said subsection (2), beginning with the date on which the order was made to the hospital specified by the Secretary of State.

(2) The court by which any such order as aforesaid is made may give such directions as it thinks fit for the conveyance of the person to whom the order relates to a place of safety and his detention therein pending his admission to the hospital within the relevant period mentioned in the foregoing sub-paragraph.

(3) Where a person is admitted within the said period to the hospital specified by the Secretary of State, any such order as aforesaid shall be sufficient authority for the managers to detain him in the hospital in accordance with the provisions of the Mental Health Act 1959, as applied by the next following paragraph in the case of an order under the said subsection (1) or paragraph 3 of this Schedule in the case of an order under the said subsection (2).

2.—(1) A person who is admitted to a hospital in pursuance of an order under subsection (1) of section 5 of this Act shall be treated for the purposes of the said Act of 1959 as if he had been so admitted in pursuance of a hospital order made, on the date of the first-mentioned order, under section 60 of that Act, together with an order restricting discharge made under section 65 of that Act without limitation of time.

(2) For the purposes of subsection (4) of section 5 of this Act a person shall not be treated as detained in pursuance of an order at any time after the Secretary of State has directed (under section 66 of the said Act of 1959) that the said person shall cease to be subject to the special restrictions set out in the said section 65.

3. A person who is admitted to a hospital in pursuance of an order under subsection (2) of section 5 of this Act shall be treated for the purposes of Part IV of the said Act of 1959 as if he had been admitted on the date of the order in pursuance of an application for admission for observation duly made under the said Part IV.

4. In the application of subsection (5) of section 63 of the said Act of 1959 to orders under subsection (1)(a) and (c) of section 5 of this Act, the proviso to section 63(5) shall have effect as if the reference to a conviction included a reference to a special verdict and to a finding that the accused was under disability.

SCHEDULE 2

Section 7.

AMENDMENTS RELATING TO COURTS-MARTIAL

PART I

AMENDMENTS OF ARMY ACT 1955 AND AIR FORCE ACT 1955

- Section 108 ... After the words " has sentenced the accused " (petitions against finding or sentence) there shall be inserted the words " or has found the accused to be unfit to stand his trial or to be not guilty by reason of insanity ".
- Section 110(2) ... At the end of the subsection there shall be added the words " or a confirming officer may, if he is of opinion that the case is not one where there should have been a finding of not guilty, but that there should have been a finding that the accused was unfit to stand his trial, substitute a finding that the accused was unfit to stand his trial ".
- Section 116(1) ... The words " by reason of insanity " shall be omitted, and at the end of the subsection there shall be added the words:—
 " For purposes of this subsection ' unfit to stand his trial ' means under any disability such as apart from the Criminal Procedure (Insanity) Act 1964 would constitute a bar to a trial on indictment in England or Wales ".
- Section 116(2) ... For the words " was guilty of that offence but (finding of insanity at time of offence charged) was insane at the said time " there shall be substituted the words " was not guilty of that offence by reason of insanity ".
- After section 116(4) ... There shall be inserted as subsection (4A) of section 116:—
 " (4A) Where on the trial of a person by court-martial the question arises (at the instance of the defence or otherwise) whether the accused is unfit to stand his trial, the following provisions shall have effect:—
 (a) the court, if having regard to the nature of the supposed disability the court is of opinion that it is expedient to do so and in the interests of the accused, may postpone consideration of the question until any time up to the opening of the case for the defence, and if before the

SCH. 2 After section 116(4)—*cont.*

question falls to be determined the court finds the accused not guilty of the charge or each of the charges on which he is being tried, the question shall not be determined;

(b) subject to paragraph (a) above, the question shall be determined as soon as it arises;

(c) where the accused is found unfit to stand his trial, the trial shall not proceed or further proceed, but if the question is determined at a time later than on arraignment, the confirming officer or reviewing authority may substitute a finding of not guilty (other than a finding of not guilty by reason of insanity), if of opinion that the court should before that time have come to such a finding."

Section 116(5) ... (1) There shall be omitted from the beginning of the subsection to the words "save as aforesaid".
 (revision, confirmation and review of finding of guilty but insane) (2) In the phrase "other findings of guilty" the word "other" shall be omitted.

After section 116(5) ... There shall be added as subsections (6) and (7) of section 116:—

"(6) Where the confirming officer or reviewing authority substitutes for a finding of not guilty by reason of insanity a finding of guilty of an offence, the confirming officer or reviewing authority shall have the like powers of sentencing the accused and other powers as the court-martial would have had on the like finding of guilty, and any sentence imposed shall be promulgated and have effect as would a sentence duly substituted by the confirming officer or reviewing authority for a sentence of the court-martial:

Provided that the confirming officer or reviewing authority shall not have power by virtue of this subsection to impose a sentence of death, and where apart from this proviso a sentence of death would be required by law, the sentence shall (whatever the circumstances) be one of imprisonment for life.

After section 116(5)—*cont.*

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(7) Where in pursuance of a finding of not guilty by reason of insanity a person is detained under section 71 of the Mental Health Act 1959, section 64 of the Mental Health (Scotland) Act 1960 or section 57 of the Mental Health Act (Northern Ireland) 1961, and the reviewing authority quashes the finding (without substituting another finding), then if the reviewing authority is of opinion—

(a) that the person in question is suffering from mental disorder (within the meaning of the Mental Health Act 1959) of a nature or degree which warrants his detention in a hospital under observation (with or without other 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,

the reviewing authority shall make an order for his continued detention under the Act; and the order shall be sufficient authority for him to be detained, and the Act shall apply, as if on the date of the order he had been admitted to the hospital in pursuance of an application duly made under the Act (being in England or Wales an application for admission for observation).

In this subsection any reference to the Mental Health Act (Northern Ireland) 1961 or any provision thereof includes any corresponding Act or provision for the time being in force in Northern Ireland.”

Section 134 ... (persons not to be tried for offences already disposed of)

(1) At the end of subsection (2)(a) there shall be added the words “ or of a finding by the court-martial that he is not guilty of the offence by reason of insanity ”.

(2) In subsection (3) after the words “ a finding of guilty of an offence ” there shall be inserted the words “ or of a finding of not guilty of an offence by reason of insanity ”.

AMENDMENTS OF NAVAL DISCIPLINE ACT 1957

- Section 63 ... (1) In subsection (1)(a) the words “ by reason of insanity ” shall be omitted, and at the end of the subsection there shall be added the words:—
- (findings of insane at time of trial or offence)
- “ For purposes of this subsection ‘ unfit to stand his trial ’ means under any disability such as apart from the Criminal Procedure (Insanity) Act 1964 would constitute a bar to a trial on indictment in England or Wales.”
- (2) At the end of the section there shall be added as subsection (3):—
- “ (3) Where on the trial of a person by court-martial the question arises (at the instance of the defence or otherwise) whether the accused is unfit to stand his trial, the following provisions shall have effect:—
- (a) the court, if having regard to the nature of the supposed disability the court is of opinion that it is expedient to do so and in the interests of the accused, may postpone consideration of the question until any time up to the opening of the case for the defence, and if before the question falls to be determined the court finds the accused not guilty of the charge or each of the charges on which he is being tried, the question shall not be determined;
 - (b) subject to paragraph (a) above, the question shall be determined as soon as it arises;
 - (c) where the accused is found unfit to stand his trial, the trial shall not proceed or further proceed.”
- Section 70(1)... (review of findings of guilty and sentences) ... After the words “ and any sentence awarded in respect of such a finding ” there shall be inserted the words “ and any finding by a court-martial under section 63(1) of this Act that a person is unfit to stand his trial or is not guilty by reason of insanity ”.

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- Section 70(2)... ... After the words "by a court-martial" there shall be inserted the words "or found thereunder to be unfit to stand his trial or to be not guilty by reason of insanity".
- (petitions against finding or sentence)
- Section 70(3)... ... After the words "against a conviction by court-martial under this Part of this Act" there shall be inserted the words "or a finding of a court-martial under section 63(1)", and after the words "that conviction" there shall be added the words "or finding".
- (effect on duty to review, where appeal against conviction is lodged)
- Section 71 (1) In subsection (1)(b) after the words "some other finding of guilty" there shall be inserted the words "or of not guilty by reason of insanity".
- (power to quash or alter findings)
- (2) At the end of subsection (1) there shall be added as paragraphs (c) and (d):—
- “(c) where the finding is that the accused was unfit to stand his trial, and that question was determined at a time later than on the commencement of the trial, substitute a finding of not guilty (other than a finding of not guilty by reason of insanity), if the Defence Council are of opinion that the court should before that time have come to such a finding;
- (d) substitute a finding that the accused was unfit to stand his trial, if the Defence Council are of opinion that the case is not one where there should have been a finding of not guilty, but that there should have been a finding that the accused was unfit to stand his trial.”
- (3) After subsection (4) there shall be added as subsections (5) and (6):—
- “(5) Where a finding of guilty of an offence is substituted by the Defence Council under this section for a finding of not guilty by reason of insanity, the Defence Council shall have the like powers of sentencing the accused and other powers as the court-martial would have had on the like finding of guilty, and the sentence shall be treated for all purposes as the sentence of the court-martial:
- Provided that the Defence Council shall not have power by virtue of this subsection to impose a sentence of death, and where apart from this proviso a

SCH. 2 Section 71—cont.

sentence of death would be required by law, the sentence shall (whatever the circumstances) be one of imprisonment for life.

(6) Where in pursuance of a finding of not guilty by reason of insanity a person is detained under section 71 of the Mental Health Act 1959, section 64 of the Mental Health (Scotland) Act 1960 or section 57 of the Mental Health Act (Northern Ireland) 1961, and the Defence Council quash the finding (without substituting another finding), then if the Defence Council are of opinion—

(a) that the person in question is suffering from mental disorder (within the meaning of the Mental Health Act 1959) of a nature or degree which warrants his detention in a hospital under observation (with or without other 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,

the Defence Council shall make an order for his continued detention under the Act; and the order shall be sufficient authority for him to be detained, and the Act shall apply, as if on the date of the order he had been admitted to the hospital in pursuance of an application duly made under the Act (being in England or Wales an application for admission for observation).

In this subsection any reference to the Mental Health Act (Northern Ireland) 1961 or any provision thereof includes any corresponding Act or provision for the time being in force in Northern Ireland.”

PART III

AMENDMENTS OF COURTS-MARTIAL (APPEALS) ACT 1951

Section 6(4) ... (powers of Court where appellant insane at time of offence charged) There shall be substituted for the subsection:—

“(4) If, on an appeal, the Court are of opinion—

(a) that the proper finding would have been a finding of not guilty by reason of insanity; or

Section 6(4)—*cont.*

(b) that the case is not one where there should have been a finding of not guilty, but that there should have been a finding that the accused was unfit to stand his trial;

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the Court shall order the appellant to be kept in custody under section 63 of the Naval Discipline Act 1957, section 116 of the Army Act 1955 or section 116 of the Air Force Act 1955, as the case may require, in like manner as on a finding of not guilty by reason of insanity or a finding of unfitness to stand trial by the court-martial by which the appellant was convicted.”

After section 13 ... There shall be inserted as section 13A the section set out at the end of this Part of this Schedule.

Section 20 ... At the end of the section there shall be added as subsection (3):—
(special references to the Court)

“(3) This section shall apply in the case of a finding by a court-martial of not guilty by reason of insanity as it applies in the case of the conviction of a person by court-martial, and references in subsection (2) to the person convicted shall be construed accordingly.”

Section 13A to be inserted in Courts-Martial (Appeals) Act 1951

13A.—(1) A person found by a court-martial to be unfit to stand his trial, or to be not guilty of an offence by reason of insanity, may, with the leave of the Court, appeal to the Court against the finding; and (subject to the provisions of this section) in relation to any such appeal this Part of this Act, except section 6(1) to (4), shall apply as it applies in relation to an appeal by a person convicted against his conviction (with the necessary adaptations of references to a person convicted or to a conviction). Appeals against findings of unfitness to stand trial or of not guilty by reason of insanity.

(2) Where apart from this subsection—

(a) an appeal against a finding of not guilty by reason of insanity would fall to be allowed; and

(b) none of the grounds for allowing it relates to the question of the insanity of the appellant;

the Court may dismiss the appeal if of opinion that but for the insanity of the appellant the proper finding would have been that he was guilty of an offence other than the offence charged.

(3) Where an appeal against a finding of not guilty by reason of insanity is allowed, section 5(2) of this Act shall not apply, but—

(a) if the ground, or one of the grounds, for allowing the appeal is that the finding as to the appellant’s insanity ought not to stand and the Court are of opinion that the proper finding

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would have been a finding of guilty of an offence (whether the offence charged or any other offence of which the court-martial could have found him guilty), the Court shall substitute for the finding of the court-martial a finding of guilty of that offence, and shall have the like powers of sentencing him and other powers as the court-martial would have had on the like finding of guilty, and section 6(5) of this Act shall apply as in the case of a sentence passed by the Court under the preceding subsections of that section;

(b) in any other case, the Court shall substitute for the finding a finding of not guilty:

Provided that the Court shall not have power by virtue of this subsection to impose a sentence of death, and where apart from this proviso a sentence of death would be required by law, the sentence shall (whatever the circumstances) be one of imprisonment for life.

(4) Where in pursuance of a finding of not guilty by reason of insanity a person is detained under section 71 of the Mental Health Act 1959, section 64 of the Mental Health (Scotland) Act 1960 or section 57 of the Mental Health Act (Northern Ireland) 1961, and the Court in accordance with subsection (3)(b) above substitute a finding of not guilty, then (subject to section 6(4) of this Act as applied by this section) if the Court are of opinion—

- (a) that the person in question is suffering from mental disorder (within the meaning of the Mental Health Act 1959) of a nature or degree which warrants his detention in a hospital under observation (with or without other 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,

the Court shall make an order for his continued detention under the Act; and the order shall be sufficient authority for him to be detained, and the Act shall apply, as if on the date of the order he had been admitted to the hospital in pursuance of an application duly made under the Act (being in England or Wales an application for admission for observation).

In this subsection any reference to the Mental Health Act (Northern Ireland) 1961 or any provision thereof includes any corresponding Act or provision for the time being in force in Northern Ireland.

(5) Where there is an appeal against a finding that the accused was unfit to stand his trial, then—

- (a) where that question was determined by the court-martial at a time later than on arraignment or, in the case of a naval court-martial, later than on the commencement of the trial, the appeal may be allowed (notwithstanding that the finding was properly come to) if the Court are of opinion that the case is one in which the court-martial should before that time have come to a finding of not guilty;
- (b) if the Court are of that opinion, the Court shall substitute a finding of not guilty, and the appellant shall then not be

liable to be tried by a court-martial or by any other court for the offence with which he was charged;

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- (c) subject to paragraph (b) above, where the appeal is allowed, the appellant may be tried accordingly for the said offence, and if he is for the time being detained under the Mental Health Act 1959, the Mental Health (Scotland) Act 1960 or the Mental Health Act (Northern Ireland) 1961, the Court may make such order as appears to the Court necessary or expedient pending any such trial for his continued detention under that Act.

In this subsection references to a finding of not guilty do not include a finding of not guilty by reason of insanity.

Table of Statutes referred to in this Act

| Short Title | Session and Chapter |
|--|--|
| Criminal Lunatics Act 1800 | 39 & 40 Geo. 3. c. 94. |
| Trial of Lunatics Act 1883 | 46 & 47 Vict. c. 38. |
| Criminal Appeal Act 1907 | 7 Edw. 7. c. 23. |
| Courts-Martial (Appeals) Act 1951 | 14 & 15 Geo. 6. c. 46. |
| Prison Act 1952 | 15 & 16 Geo. 6. & 1 Eliz. 2. c. 52. |
| Army Act 1955 | 3 & 4 Eliz. 2. c. 18. |
| Air Force Act 1955 | 3 & 4 Eliz. 2. c. 19. |
| Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955. | 3 & 4 Eliz. 2. c. 20. |
| Homicide Act 1957 | 5 & 6 Eliz. 2. c. 11. |
| Naval Discipline Act 1957 | 5 & 6 Eliz. 2. c. 53. |
| Mental Health Act 1959 | 7 & 8 Eliz. 2. c. 72. |
| Mental Health (Scotland) Act 1960 | 8 & 9 Eliz. 2. c. 61. |
| Administration of Justice Act 1960 | 8 & 9 Eliz. 2. c. 65. |

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