



THIRD INTERIM REPORT
of the
INTERDEPARTMENTAL COMMITTEE
on
MENTALLY ILL AND MALADJUSTED PERSONS

TREATMENT AND CARE OF PERSONS
SUFFERING FROM MENTAL DISORDER
WHO APPEAR BEFORE THE COURTS ON
CRIMINAL CHARGES

DUBLIN:
PUBLISHED BY THE STATIONERY OFFICE

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November 1978.

THIRD INTERIM REPORT OF THE INTERDEPARTMENTAL COMMITTEE ON MENTALLY ILL AND MALADJUSTED PERSONS

- PART I

- GENERAL

1. The terms of reference of the Committee are:

"To examine and report on the provisions, legislative, administrative and otherwise, which the Committee considers to be necessary or desirable in relation to persons (including drug abusers, psychopaths and emotionally disturbed and maladjusted children and adolescents) who have come, or appear likely to come, in conflict with the law and who may be in need of psychiatric treatment."

2. The Committee has already made two interim reports, one on Assessment Services for the Courts in Respect of Juveniles and the other on The Provision of Treatment for Juvenile Offenders and Potential Juvenile Offenders.

3. In this Report the Committee sets out in draft legislative form its recommendations as to the changes it deems necessary in the law as it affects persons suffering from mental illness or serious personality disorders who come before the courts on criminal charges. The Committee has thought it desirable to state its conclusions in the form of a draft Bill, not so much to give finite form to its recommendations as to enable the scope and effect of those recommendations to be viewed and appraised as components of a legislative pattern.

4. As the law stands, for the purpose of determining guilt or innocence on a charge of having committed a crime, judges and juries are debarred from taking into account mental illness or personality disorder unless it is sufficiently serious to amount to insanity as that term is understood in the criminal law. For the test of insanity, see the judgment of the Supreme Court in *Doyle v. Wicklow Co. Co.* [1974] I.R. 55. Mental illness or personality disorder, as a general rule, is taken into account only for sentencing purposes, and even then it rarely becomes a factor in the judicial process unless it is raised by the defence. In the result, many persons are dealt with by the courts as "normal" offenders who are either not responsible (or not fully responsible) for the conduct charged against them or who, even if fully responsible for such conduct, are in need of psychiatric or other special treatment. The inability, or the restricted ability, of the courts to order that convicted persons receive appropriate psychiatric treatment is a grave defect in the present state of the criminal law. For example, the courts have no jurisdiction to order that a convicted person be sent direct to a psychiatric institution for treatment; they can but annex to a sentence of detention a recommendation for psychiatric treatment. The Committee is satisfied that a not inconsiderable number of persons, either before or after conviction, pass unnecessarily and undesirably into prisons or kindred places of detention. Because such places are of their nature not usually conducive to successful psychiatric therapy, the position is not remedied by court orders providing that prisoners be given suitable psychiatric treatment. The Committee is of the opinion that an appreciable number of accused persons who are in need of either in-patient or out-patient psychiatric treatment are dealt with by the courts without due regard to the need for such treatment.

5. The draft Bill annexed hereto provides that where the court has reason to believe that an accused person may be suffering from mental disorder, the court will be empowered at the earliest possible opportunity to have the situation medically investigated and to make the appropriate order. Where an issue of unfitness to plead arises, the District Court will have limited powers of disposing of the matter if the offence charged is a summary offence or one which in certain circumstances is fit to be tried summarily; otherwise the issue will be remitted to the Circuit Court or the Central Criminal Court. As the law now stands, the District Court has no jurisdiction to try an issue of unfitness to plead. Because an adjudication on that issue (which does not involve a verdict of guilt or innocence) may be called for in the case of a summary offence no less than in the case of an indictable offence, the Committee considers that the District Court should be invested with that jurisdiction. The Bill further envisages that the verdict of this preliminary issue will in every case be given by a judge rather than by a jury.

6. The present law is that where a person charged with an indictable offence was legally insane at the time of committing the act or omission constituting the offence charged, a jury shall so find, and the verdict is the one usually abbreviated as "guilty but insane". This abbreviation tends to conceal the fact that it is a verdict of not guilty, for the accused is found not guilty of the offence on the ground of insanity, notwithstanding that it was he who committed the act or omission. At present the District Court has no jurisdiction to give such a verdict. The Committee considers this to be a serious shortcoming. If a person is not responsible for his conduct because of insanity, it is but a fortuity that his conduct amounts to an indictable rather than a summary offence. It is in the interest of the accused, as well as in the public interest, that his non-responsibility in law for his conduct be judicially determined, even if the offence be a summary one, and that, where appropriate, an order may be made to deal with his psychiatric condition. The Bill therefore vests the necessary jurisdiction in the District Court when the offence charged is within the jurisdiction of that Court.

7. The legal criterion for insanity has been given various formulations in different jurisdictions, with varying degrees of acceptance or rejection by lawyers and psychiatrists. After careful consideration the Committee has opted for the tripartite test: (i) did the accused commit the act or omission charged? (ii) if so, was he suffering at the time from mental disorder (as defined)? and (iii) if so, was it such that he should not be found guilty of the offence? This test, which has not the detail or particularity of some of the other formulations, has the merit of concentrating the decision on whether, having regard to the nature and effect of the particular mental disorder, the accused should in the circumstances be held to be outside the range of legal responsibility.

8. Wide powers are to be found in the Bill enabling courts, in varying circumstances, both before and after conviction, to refer or commit an accused person to a designated centre. It will be for the Minister for Health to designate particular psychiatric centres as centres for the reception, treatment and care of persons or classes of persons, or persons or classes of persons from particular areas, committed thereto under the Bill. It will be seen that many persons who under the existing law would pass, at least in the first instance, into a prison or other place of detention, will under the Bill be sent to a designated centre, to become a patient rather than a prisoner, generally under the ultimate control of the courts. But the powers of the courts will be such that, having regard to the expert opinion that may be called on, out-patient treatment and community care will be the primary consideration, so that only those whose condition so requires will be detained in a designated centre.

9. The Bill proposes the introduction for the first time into our legal system of the defence of diminished responsibility in the case of offences carrying fixed mandatory sentences. At present, where the judge has a discretion as to sentence, he is usually able to give effect in one degree or another to degrees of guilt produced by factors such as diminished responsibility. But where the law mandates a particular and unvarying sentence, the courts are debarred from giving any effect to the fact that, while the accused was not insane, his responsibility for his conduct was substantially diminished. For practical purposes, the three offences calling for special treatment in this respect are capital murder, murder and treason. In the case of capital murder and murder, it is proposed that if the accused satisfies the jury that at the time of the alleged offence he was suffering from mental disorder which, while not such as to justify a finding of not guilty by reason of mental disorder, was such as to diminish substantially his responsibility for the act or omission charged, the jury may find him guilty of manslaughter on the ground of diminished responsibility. For this he may be punished as for manslaughter (i.e. a maximum sentence of penal servitude for life), or be committed to a designated centre until further order, or be ordered to be released subject to such conditions as the judge may impose. As to treason, it is proposed that where the accused was suffering at the time from diminished responsibility he will be found guilty of treason reduced by diminished responsibility, and be dealt with therefor as if he had been found guilty of manslaughter on the ground of diminished responsibility.

10. The Bill does not deal separately or specifically with drug abusers or intoxicated persons who commit offences. The primary reason for this is because the Committee's terms of reference encompass consideration of measures necessary or desirable for dealing with such offenders only to the extent that they may be in need of psychiatric treatment. While it is a fact that in many cases drug abusers and persons who commit offences while voluntarily intoxicated may be in need of psychiatric treatment, this is not invariably so, and the Committee considered that the problems presented by such offenders require to be studied and reported on without the limiting restriction of the frame of reference within which the Committee is confined. Drug abuse and intoxication as factors in the commission of criminal offences require a depth and spread of study beyond the range of this Committee. Drug abuse raises special problems which would need to be dealt with in a special Bill. As to intoxication, the whole question of the attitude which the criminal law should adopt to intoxication, whether as a defence or as an aggravating factor, would need to be dealt with as part of a more general reform of the criminal law. The Committee considered in particular the recommendation in the Report of the United Kingdom Committee on Mentally Abnormal Offenders (Cmnd. E.244) that there should be a new offence of dangerous intoxication, which would be committed by a person who acted violently while voluntarily intoxicated. Since such an offence would normally arise only in circumstances when the defence of intoxication would, in the absence of this new offence, result in an acquittal, it was felt that a conviction for this new offence would very rarely arise. It was, therefore, the decision of the Committee that, as in the case of drug abuse, intoxication as a whole should not be dealt with in this Bill.

11. The implementation of the terms of the Bill will mean that many persons who would otherwise be detained in, or pass through, a prison or other place of detention under the control of the Department of Justice will in future be detained in a designated centre approved by the Minister for Health. Such persons, because they are in need of psychiatric assessment or treatment, will be treated as patients rather than as prisoners. The Bill contains a series of provisions governing the reception, transfer and release

of such persons and it envisages that in this respect, as well as in other respects, regulations to be made by the Minister for Health, or by the Minister for Justice after consultation with the Minister for Health, will implement the provisions of the Bill. The Regulations should be so framed as to ensure that the transfer of persons between institutions will be effected with the co-operation of the institutions concerned.

12. Section 27 of the Bill provides for a special category of persons who are not suitable for detention either in a prison or in a designated centre. Those are violent persons who come within a class sometimes referred to as psychopaths or sociopaths but which we consider it more proper to identify as persons suffering from a persistent disorder or disability of personality which manifests itself in abnormally violent or aggressive conduct. Because of their propensity to cause injury to themselves or to others, such offenders create problems of security and therapy or care which prisons or kindred institutions are not equipped or staffed to cope with. Nor would designated centres be suitable for the detention of such persons, for, as the Committee has been advised, such persons are not generally amenable to any conventional psychiatric therapy and the conditions of high security which they require would be otherwise counter-productive in a designated centre. As there is likely to be at any given time a small number of such persons requiring suitable detention, the Committee envisages the designation by the Minister for Justice of a unit, which the Bill refers to as a special unit, for the detention of such persons. The special unit should be designed and run so as best to deal with the special problems presented by such persons who, according to the expert advice available to the Committee, do not fit into any recognised category of mental disorder and who do not accordingly qualify for exemption from criminal liability by reason of mental disorder.

13. Hitherto, persons ordered by the courts to be detained because of insanity were usually committed to the Central Mental Hospital. While that hospital is likely to continue to be the principal place of detention for mentally ill offenders, the Bill is framed on the basis that the Minister for Health may designate any psychiatric centre, public or private, to be a designated centre. Thus it will be possible for a court to order that a particular person be detained in such designated unit as is best calculated to meet his particular situation. The Bill moreover envisages the transfer, where appropriate, of a patient from one designated centre to another (including the Central Mental Hospital). The flexible system of transfers provided for in the Bill will, it is proposed, be used in the case of patients detained in such institutions under court orders. As to other patients, particularly voluntary patients, they do not appropriately come within the scheme of the Bill. In any event, the Committee considers that the repeal or amendment of section 207 of the Mental Treatment Act, 1945 (providing for transfer from a district mental hospital to the Central Mental Hospital) in regard to such patients should be effected in a Mental Treatment Bill. Because of the many complaints received by the Committee as to the difficulties in the operation of section 207, it is to be hoped that legislation providing for a more workable system of transfers in cases not covered by this Bill will be introduced as soon as possible. For the purposes of this Bill there is to be no essential difference between the Central Mental Hospital and district mental hospitals. The proposed repeals of the legislative provisions which surrounded the Central Mental Hospital with the aura and stigma of a "criminal lunatic asylum", and the change in its status to being a hospital deemed to be maintained by the Eastern Health Board under section 38 of the Health Act, 1970, should give that institution a new standing and acceptability.

14. So as to avoid any possible wrongful detention in a designated centre or in a special unit, so as to provide regular and independent supervision of the welfare and safety of persons so detained, and so as to make available expert and impartial advice for the courts in the carrying out of their functions, the Bill proposes the establishment of a permanent body to be known as the Mental Care Review Body (referred to in the Bill as the Review Body). It is to consist of (a) a chairman and deputy chairman appointed by the Minister for Health after consultation with the Minister for Justice, (b) one member and one substitute member appointed by the Minister for Health, (c) one member and one substitute member appointed by the Minister for Justice, and (d) two members appointed by the Minister for Health from a panel of five psychiatrists nominated by the Executive Council of the Royal College of Psychiatrists (Irish Division). A person detained in a designated centre or in a special unit will have a right to apply to the Review Body for a review of his detention, and this right may be exercised thereafter at specified intervals. The Review Body must consider every duly-made application for review and, having made such enquiries as it thinks proper, report its opinion to the appropriate court. The chief medical officer of every designated centre or special unit shall prepare a report for the Review Body in relation to every person detained therein pursuant to an order of a court at the commencement of the Bill as an Act. The chief medical officer shall also inform the Review Body forthwith of every new admission pursuant to an order of a court under the Bill. Where a convicted person is detained in a designated centre and the chief medical officer is of opinion that, by reason of mental disorder, he would, if released at the end of the period of detention, be dangerous to himself or to others, the chief medical officer shall report accordingly to the President of the High Court (whose functions may be exercised by any nominated judge of the High Court), who shall make such order as he thinks proper after considering a report from the Review Body. In the case of a convicted person detained in a special unit by reason of violent personality disorder the Review Body is required by section 28 to consider whether, if released at the end of his sentence, he would be dangerous to himself or others and to report its findings to the President of the High Court (or nominated judge) if it thinks proper to do so. The Court may, after a full enquiry, order the person's continued detention. The Committee recommends continued detention on the grounds that it would not be in the interest of the community or in the interest of the prisoner that he should be released while suffering from such a dangerous condition. The Committee is conscious of the fact that the implementation of this recommendation may give rise to legal difficulties and the recommendation is not without reservations in principle on the part of certain members of the Committee. Whenever the Review Body is of opinion that the person's further detention should be reviewed by the President of the High Court, it shall report accordingly. It will be seen, therefore, that the Review Body, which will function with a quorum of three, one of whom must be an independent psychiatrist, will exercise expert and impartial advisory functions in respect of every person detained in a designated centre or special unit pursuant to a court order.

15. The elaboration in the Bill of the functions of the specified institutions for those suffering from mental disorder or violent personality disorder is not intended to imply that non-institutional treatment may not in many cases be the better or the proper way of dealing with an offender's condition. The Bill makes clear that the courts are to have jurisdiction to ensure that in an appropriate case a person shall, in lieu of being sent to an institution for treatment, be required to undergo out-patient treatment. It is envisaged that those undergoing such out-patient treatment and those released from a designated centre or special unit will have the full benefit of appropriate

community services. Because it was thought proper to leave the detailed implementation of the proposed legislation to regulations, these and other safeguards may be more appropriately dealt with from time to time by regulations.

PART II
DRAFT
OF
CRIMINAL JUSTICE (MENTAL ILLNESS) BILL

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PART I

PRELIMINARY AND GENERAL

Commencement (Section 2)

This section permits of flexibility in bringing different provisions of the Act into operation. Some sections, for example, depend on the provision of a special unit pursuant to *section 27* for the detention of persons suffering from violent personality disorder as defined in *section 4*. Others are dependent upon the designation of suitable hospitals or other institutions as centres for the assessment of persons suspected to be suffering from mental disorder and for the treatment of those found to be so suffering. Other provisions are not dependent on the provision of any such institutions.

EXPLANATORY NOTE

Interpretation (Section 3)

The "approved medical officers" should be medical practitioners having qualifications and experience in psychiatry or psychological medicine.

The adjective "dangerous" is used in a number of sections, in reference to persons ordered to be detained in a designated centre or special unit (see, for example, *sections 13, 17, 26 and 28*), and the definition is designed to emphasise that the apprehension of danger which calls for the detention may cover danger to other persons' property as well as danger to their persons.

CRIMINAL JUSTICE (MENTAL ILLNESS) BILL

BILL

entitled

AN ACT TO REFORM THE CRIMINAL LAW IN RELATION TO PERSONS SUFFERING FROM MENTAL OR PERSONALITY DISORDER AND TO PROVIDE FOR THEIR DETENTION, TREATMENT AND CARE AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

Short title 1. This Act may be cited as the Criminal Justice (Mental Illness) Act, 198 .

Commencement 2. This Act shall come into operation on such day or days as, by order or orders made by the Minister for Health, after consultation with the Minister for Justice, may be fixed therefor either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions.

Interpretation generally 3. (1) In this Act, except where the context otherwise requires, "act" includes an omission;

"approved medical officer" means a registered medical practitioner approved of by the Minister for Health as having adequate qualifications and experience to carry out any function or functions specified in this Act or prescribed;

"chief medical officer", in relation to a designated centre or special unit, includes an approved medical officer duly authorised, in such manner as may be prescribed, to act for him;

"dangerous", when used of a person in relation to others, means dangerous to others in their persons or their property;

"designated centre" has the meaning assigned by section 5;

EXPLANATORY NOTE

Mental disorder and violent personality disorder (Section 4)

The definitions distinguish between mental disorder, which is an illness or defect of the mind, and violent personality disorder, which, as its name implies, is disorder or disability of personality, persistent in its character and manifesting itself in abnormally violent or aggressive conduct.

Mental disorder will, if of sufficient degree, exonerate an accused person from guilt on a criminal charge. This is because such mental illness or defect presupposes that the accused did not have the mental element which is necessary to make an act a crime.

Psychiatrists distinguish between mental disorder and personality disorder. The latter, of itself, will not exonerate a person from criminal responsibility, if he is shown to have the guilty intent ("mens rea") of which he is capable. If his condition is persistently violent, his own safety and the safety of society require that special measures be taken for his custody and care.

"health board" means a board established under the Health Act, 1970;

"higher Court" means the Central Criminal Court or the Circuit Court;

"Justice" means Justice of the District Court;

"Mental disorder" has the meaning assigned by *section 4*;

"offence" means an offence on conviction for which a person can be sentenced to death, penal servitude, imprisonment or detention;

"prescribed" means prescribed by regulations made under this Act;

"prison" includes Saint Patrick's Institution, any place provided under section 2 of the Prisons Act, 1970, any place in which persons are kept in military custody pursuant to section 2 of the Prisons Act, 1972, or any place specified to be used as a prison under section 3 of that Act, and "prisoner" shall be construed accordingly;

"registered medical practitioner" means a person registered in the register established under the Medical Practitioners Act, 1927;

"the Review Body" has the meaning assigned by *section 20*;

"sentence" means a sentence imposing penal servitude, imprisonment or detention in a prison;

"special unit" has the meaning assigned by *Section 27*;

"violent personality disorder" has the meaning assigned by *section 4*.

(2) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment.

Mental disorder
and violent
personality
disorder 4. (1) In this Act —

"mental disorder" means mental illness or mental handicap but does not include violent personality disorder;

"violent personality disorder" means a persistent disorder or disability of personality which manifests itself in abnormally violent or aggressive conduct.

(2) In *subsection (1)* "mental handicap" means arrested or incomplete development of mind which results in a marked lack of intelligence and inadequate adaptation to environment.

EXPLANATORY NOTE

Designated centres

(Section 5)

Persons found to be suffering from mental disorder are to be treated in selected psychiatric centres, designated under *section 5* ("designated centres"). For those suffering from violent personality disorder, and therefore inherently dangerous to society, a special place of detention and treatment ("a special unit") is provided for under *section 27*.

Designated
centres

5. (1) In this section –

“psychiatric centre” means a hospital or other institution in which treatment is provided for patients suffering from mental disorder;

“public psychiatric centre” means a psychiatric centre maintained by a health board;

“private psychiatric centre” means a psychiatric centre maintained otherwise than by a health board.

(2) The Minister for Health may by regulations designate any public psychiatric centre or private psychiatric centre as a centre for the reception, treatment and care of persons or classes of persons, or persons or classes of persons from particular areas, committed thereto under the provisions of this Act, or withdraw or vary any such designation.

(3) The Minister for Health shall not designate a private psychiatric centre without the consent of the person or authority maintaining the centre.

(4) A designated psychiatric centre is referred to in this Act as a “designated centre”.

Evidence of
medical
certificates
and reports

6. (1) A certificate or report in a prescribed form purporting to be signed by a registered medical practitioner or by an approved medical officer shall, unless the contrary is shown, be received by a Court as evidence of its contents and of the fact that it was duly signed by that registered medical practitioner or approved medical officer, without proof of his capacity.

(2) A Court may, and if requested by the prosecution or the person charged shall, require a person whose signature appears or purports to appear on a certificate or report to attend before it to give oral evidence as to his capacity to sign the certificate or report or as to its contents or otherwise.

Regulations

7. (1) The Minister for Health may make regulations in relation to anything referred to in this Act as prescribed or to be prescribed.

(2) The Minister for Justice, after consultation with the Minister for Health, may make regulations for the purpose of implementing the provisions of this Act.

(3) Regulations under this Act shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either House within the next twenty-one days on which that House has sat after the regulations have been laid before it, the regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

EXPLANATORY NOTE

PART II

Functions of the District Court (Sections 10 to 13)

This Part proposes to confer, for the first time, jurisdiction on the District Court to consider the mental condition of persons charged before it and to make orders for the treatment and care of those found to be in need of it.

Where it appears to the Justice that the accused may be suffering from mental disorder the Justice may arrange for his examination, by any doctor in the first instance, and if it is then thought desirable to have a more detailed assessment, by an approved medical officer (*Section 10*).

The Justice will have power, on the recommendation of an approved medical officer, where an accused is found to be suffering from mental disorder (although not necessarily unfit to plead) and it would be detrimental to his health to bring him before the court at that time to commit him for in-patient treatment to a designated centre. The period of committal is to be not more than the approved medical officer advises, subject to a maximum of six months. The period may be curtailed or renewed in accordance with medical advice (*Section 11*).

In this, and every case of detention in a designated centre, the person detained has the right to apply to the Mental Care Review Body to have his case reviewed (*See Part IV*). The Review Body will receive regular reports on every person detained in mental care and will have the right to call for information and to exercise its own initiative in reviewing cases.

The person in charge of a designated centre is charged with the responsibility of returning a patient to the court where he is of opinion that it would no longer be detrimental to the patient's health to bring him before the court (*See section 25*).

Where the Justice is advised by an approved medical officer that the accused is unfit to plead by reason of mental disorder he will try that issue, if the charge is one which he has jurisdiction to deal with, or, in any other case, send the issue for trial to a higher court. If the accused is found unfit to plead, the case will be adjourned until further order and the accused may be committed to a designated centre for treatment (*Section 12*).

Expenses

8. The expenses incurred by the Minister for Health or the Minister for Justice in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Repeals

9. The enactments referred to in the *Second Schedule* are hereby repealed to the extent mentioned in the third column of that Schedule.

PART II

FUNCTIONS OF THE DISTRICT COURT

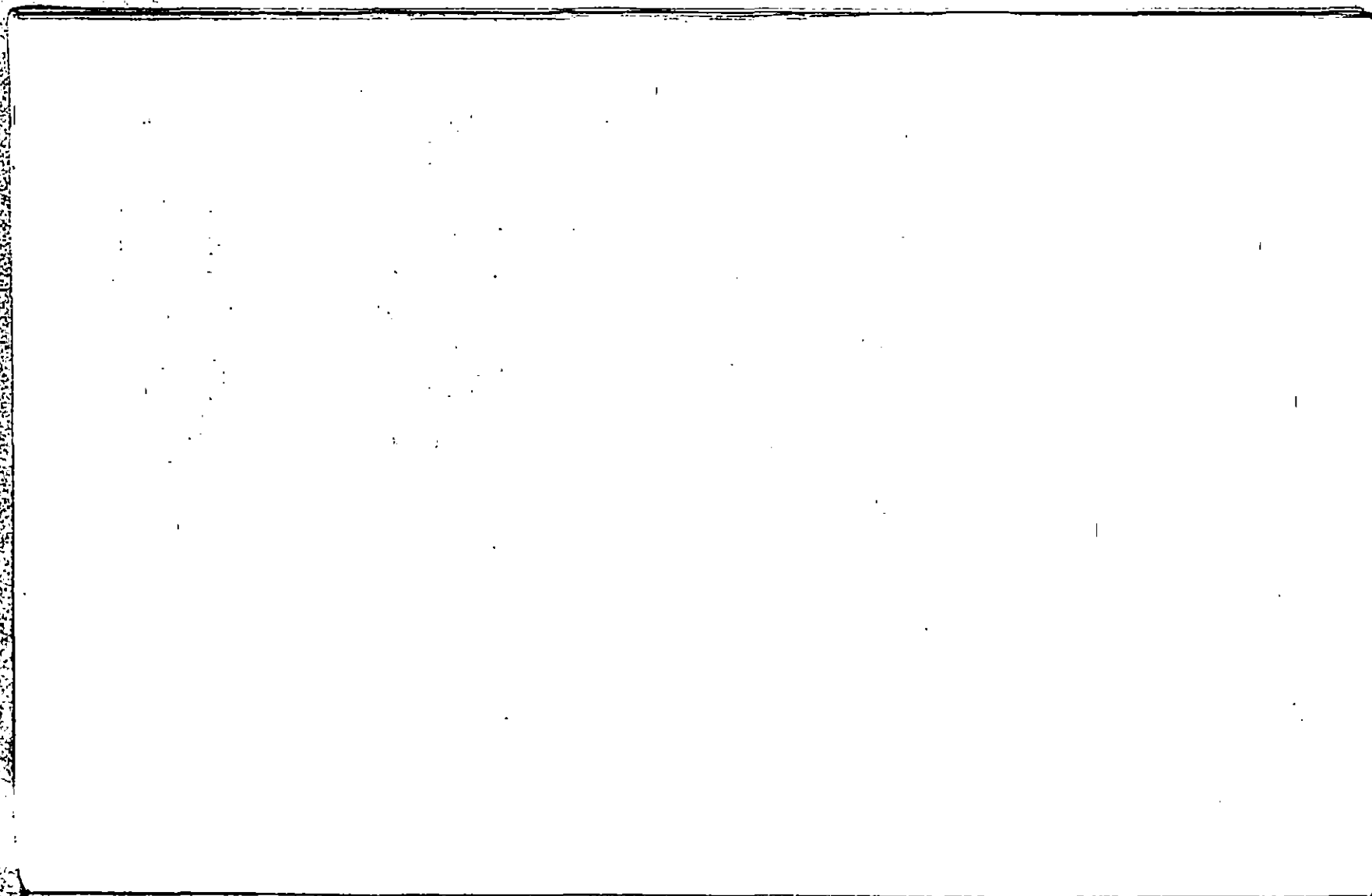
Medical
examination
of persons
charged before
District Court

10. (1) Where a person appears before the District Court charged with an offence and it appears to the Justice that the person may be suffering from mental disorder the Justice may remand him and —

- (a) if the Justice remands him on bail, he may make it a condition of the recognisance that he shall submit himself within a specified time for examination by a registered medical practitioner nominated by the Court, or
- (b) if the Justice remands him in custody, he may direct that he be examined while in custody by a registered medical practitioner nominated by the Court.

- (2) (a) Where a registered medical practitioner has examined a person pursuant to this section, he shall, as soon as may be, report the result of the examination to the Court and may, if he considers it desirable so to do, request an approved medical officer to examine the person or report to the Court that, in his opinion, he should be so examined.

- (b) Where the registered medical officer reports that, in his opinion, the person should be examined by an approved medical officer, the Justice may remand the person and —
 - (i) if the Justice remands him on bail, he may make it a condition of the recognisance that he shall submit himself within a specified



time for examination by an approved medical officer nominated by the Court, or

- (ii) if the Justice remands him in custody, he may direct that the person be examined while in custody by an approved medical officer nominated by the Court.

(3) (a) Where an approved medical officer has examined a person pursuant to this section he shall, as soon as may be, report the result of the examination to the Court.

(b) Where he reports that in his opinion the person is in need of in-patient assessment in a designated centre, the Justice may commit him to a designated centre for a period not exceeding eight days and direct that, during such period, he be examined by an approved medical officer nominated by the Court.

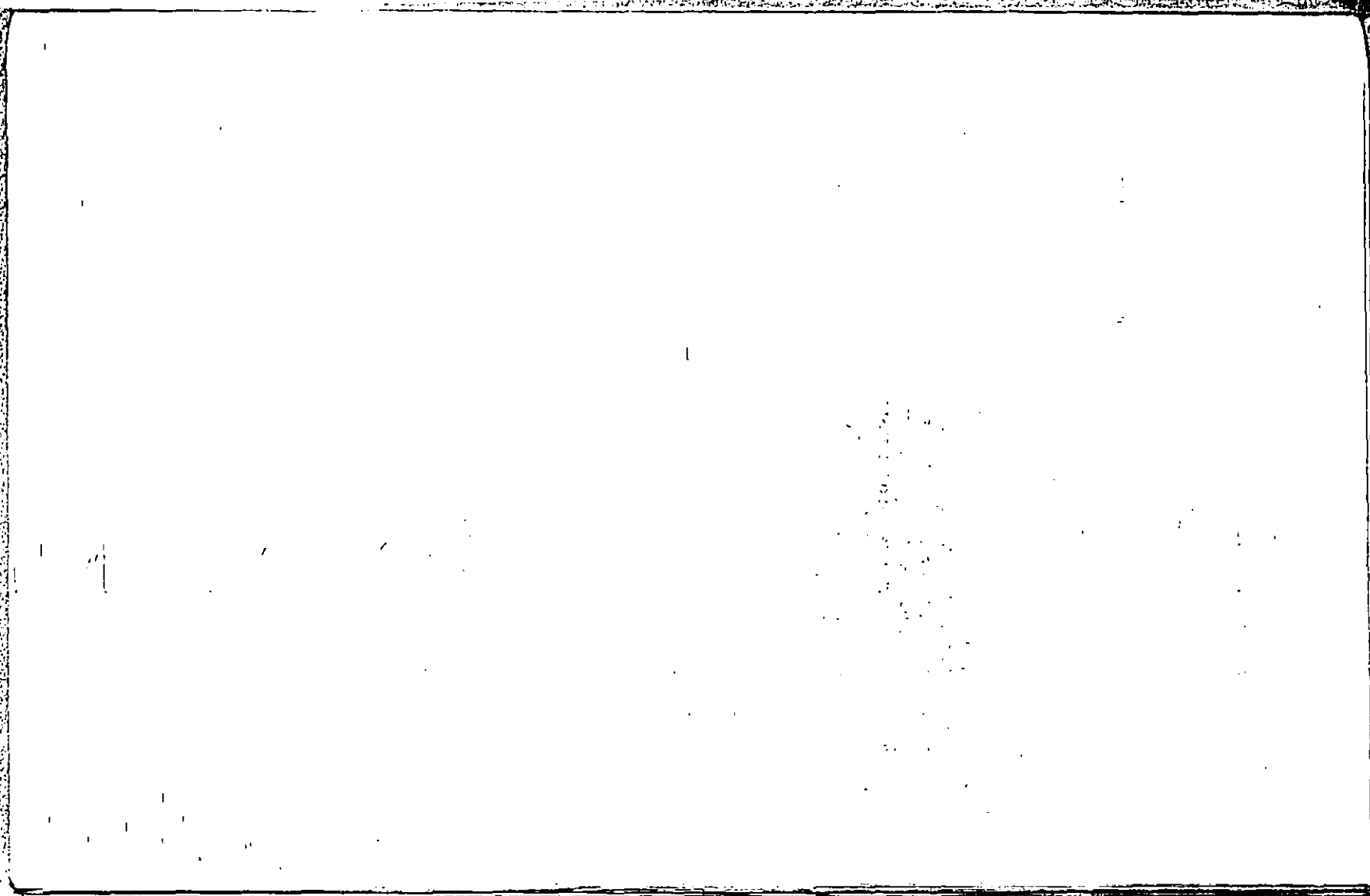
(c) If the approved medical officer reports before the expiration of the period of committal that in his opinion the person is not suffering from mental disorder, the Justice shall direct that the person be brought before the Court as soon as may be to be dealt with in accordance with law.

(4) Where, otherwise than in pursuance of this section, an approved medical officer has examined a person who is charged before the District Court with an offence, the approved medical officer may report the result of that examination to the Court and the report may be received by the Court and acted upon as if it were a report made pursuant to *subsection (3)(a)*.

Committal for in-patient treatment to designated centre

11. (1) Where an approved medical officer has reported in accordance with *section 10*, in relation to a person charged before the District Court with an offence, that —

- (a) the person is suffering from mental disorder (although not necessarily unfit to plead),
- (b) it would be detrimental to his health to bring him before the Court at that time, and



- (c) he requires in-patient treatment in a designated centre,

the Justice, if he is satisfied as to the matters so reported, may commit him, in his absence, to a designated centre for a period not exceeding such period as the approved medical officer states in his report as being, in his opinion, necessary for such treatment and not, in any case, exceeding 6 months.

(2) Where, before the expiration of a period of committal under *subsection (1)* or this subsection, an approved medical officer reports to the Court that—

- (a) the person is still suffering from mental disorder (although not necessarily unfit to plead),
- (b) it would still be detrimental to his health to bring him before the Court at that time, and
- (c) he still requires in-patient treatment in a designated centre,

the Justice, if he is satisfied as to the matters so reported, may commit him, in his absence, to a designated centre for a period not exceeding such period as the approved medical officer states in his report as being, in his opinion, necessary for such treatment and not, in any case, exceeding 6 months.

(3) If the person is not represented in the Court by solicitor or counsel, the Justice shall not make an order of committal under *subsection (1)* or *(2)* without hearing oral evidence from the approved medical officer.

Unfitness to
plead

12. (1) Where an approved medical officer has reported in accordance with *section 10* that, in his opinion, a person is, by reason of mental disorder, unfit to plead, the provisions of this section shall apply.

(2) If the offence or any of the offences charged is an indictable offence, the Justice shall, subject to *subsection (3)*, send the person, if the offence or any of the offences is an offence specified in *section 25(2)* of the Courts (Supplemental Provisions) Act, 1961, to the Central Criminal Court and, in any other case, to the Circuit Court for a trial in accordance with *section 16* of the issue whether he is unfit to plead by reason of mental disorder.

(3) If the offence charged is —

EXPLANATORY NOTE

Section 13 gives a Justice of the District Court jurisdiction to find a verdict of "not guilty by reason of mental disorder". The criminal jurisdiction of the District Court is confined to summary offences and to certain other offences, called indictable offences, ordinarily triable only by a higher Court with a jury, which on the alleged or proved facts may be regarded as minor offences fit to be tried summarily, where the accused consents to being so tried. The right to try such offences is given to the District Court by section 2 of the Criminal Justice Act, 1951. The maximum period of imprisonment which can be imposed by the District Court is twelve months.

The corresponding provision for cases tried on indictment is *section 17*.

The verdict of not guilty by reason of mental disorder is to apply where it is established that the accused person committed the act alleged but that at the time he suffered from such mental disorder that in the opinion of the Justice (or in an indictable case, the jury) he should not be found guilty. The Justice, or jury, will be guided by the medical evidence and such behavioural evidence as is adduced. If a verdict is so found, the care, treatment and control of the person become the only relevant considerations. There is no implication of guilt in the measures proposed for dealing with him, whether in his own interest or the interest of society, or both.

The proposed verdict is in substitution for the special verdict provided for by the Trial of Lunatics Act, 1883, which is popularly referred to as "guilty but insane" but is more accurately a finding that the accused person was guilty of the act or omission alleged against him but was insane, so as not to be responsible according to law for his actions, at the time when he did the act or made the omission.

- (a) a summary offence, or
- (b) a scheduled offence and the Justice considers that the facts proved or alleged constitute a minor offence fit to be tried summarily and if the Director of Public Prosecutions consents,

the Justice shall try the issue whether the person is unfit to plead by reason of mental disorder and, for this purpose, shall require the attendance of an approved medical officer to give oral evidence.

(4) Where the Justice determines that the person is unfit to plead by reason of mental disorder he shall adjourn the proceedings until further order and may, if there is oral evidence from an approved medical officer that the person is in need of in-patient treatment in a designated centre, commit him to a designated centre until an order is made by the Court under *section 25(3) or (4)*.

(5) In this section "scheduled offence" has the meaning assigned by section 2 of the Criminal Justice Act, 1951.

Verdict of not
guilty by reason
of mental
disorder

13. (1) Where a person is tried in the District Court for an offence and the Justice finds —

- (a) that he committed the act alleged against him,
- (b) that he was suffering at the time from mental disorder, and
- (c) that the mental disorder was such that he should not be found guilty of the offence.

the provisions of this section shall have effect.

- (2) (a) The Justice shall find a verdict of not guilty by reason of mental disorder.
- (b) If the Justice, having heard the evidence of an approved medical officer, is of opinion that the person may be in need of in-patient treatment in a designated centre or that there is a substantial risk that, if set at liberty, he may be dangerous to himself or to others, the Justice may commit him to a designated centre for a period not exceeding eight days and direct that during such period he be examined by another approved medical officer nominated by the Justice.

(3) That other approved medical officer shall, within the period of committal under *subsection (2)(b)*, report to the Court whether in his opinion —

- (a) the person committed is in need of in-patient treatment in a designated centre, or
- (b) there is a substantial risk that, if set at liberty, he may be dangerous to himself or to others.

(4) If the Justice, having considered the report and such other evidence as may be adduced, is satisfied that —

- (a) the person is in need of in-patient treatment in a designated centre, or
- (b) there is substantial risk that, if set at liberty, he will be dangerous to himself or to others,

the Justice shall commit him to a designated centre until an order is made by the Court under *section 25(5)*.

(5) A person found not guilty by reason of mental disorder may appeal to the Circuit Court against the verdict and against the order of committal under *subsection (4)*, if any, and the prosecution may appeal to the Circuit Court against any refusal of that order of committal.

(6) A person charged with an offence may plead not guilty by reason of mental disorder and, if the prosecution and the Justice accept that plea, the Justice shall find a verdict accordingly.

(7) Where the mental disorder of the person charged is raised by him or on his behalf as a defence to the charge and the Justice is satisfied that the prosecution has not had a reasonable opportunity to have the person examined by approved medical officers, the Justice shall, if requested so to do by the prosecution, adjourn the proceedings and direct that the person submit himself for such examination at a time and place specified by the Justice.

(8) If the person fails to comply with a direction under *subsection (7)*, the Justice may commit him to a designated centre for a period not exceeding eight days to enable such examination to take place.

EXPLANATORY NOTE

PART III

**FUNCTIONS OF THE CENTRAL CRIMINAL COURT AND
THE CIRCUIT COURT
(Sections 14 to 19)**

- Sections 14 and 15 correspond to sections 10 and 11.

PART III

FUNCTIONS OF THE CENTRAL CRIMINAL COURT AND THE CIRCUIT COURT

Medical
examination of
persons before
higher Court

14. (1) Where a person appears before the Central Criminal Court or the Circuit Court (in this Act referred to as a "higher Court") to which he has been sent forward for trial or sentence and the Judge is of opinion that the person may be suffering from mental disorder the Judge may remand him and –

- (a) if the Judge remands him on bail, he may make it a condition of the recognisance that he shall submit himself within a specified time for examination by an approved medical officer nominated by the Court, or
- (b) if the Judge remands him in custody, he may direct that he be examined while in custody by an approved medical officer nominated by the Court.

- (2) (a) Where an approved medical officer has examined a person pursuant to this section he shall, as soon as may be, report the result of the examination to the Court.
- (b) Where he reports that in his opinion the person is in need of in-patient assessment in a designated centre, the Judge may commit him to a designated centre for a period not exceeding eight days and direct that, during such period, he be examined by an approved medical officer nominated by the Court.
- (c) If the approved medical officer reports before the expiration of the period of committal that the person is not suffering from mental disorder, the Judge shall direct that the person be brought before the Court as soon as may be to be dealt with in accordance with law.

(3) Where, otherwise than in pursuance of this section, an approved medical officer has examined a person who is before the Court in relation to an offence, the approved medical officer may report the result of that examination to the Court and the report may be received by the Court and acted upon as if it were a report made pursuant to *subsection (2)(a)*.

EXPLANATORY NOTE

Section 16 gives jurisdiction to try the issue of fitness to plead in cases triable on indictment (with the exception as to "minor offences" already mentioned in the comment on *section 12*).

Committal for
in-patient
treatment to
designated
centre

15. (1) Where an approved medical officer has reported, in relation to any person, that —

- (a) the person is suffering from mental disorder (although not necessarily unfit to plead),
- (b) it would be detrimental to his health to bring him before the Court at that time, and
- (c) he requires in-patient treatment in a designated centre,

the Judge, if he is satisfied as to the matters so reported, may commit him, in his absence, to a designated centre for a period not exceeding such period as the approved medical officer states in his report as being, in his opinion, necessary for such treatment and not, in any case, exceeding 6 months.

(2) Where, before the expiration of a period of committal under *subsection (1)* or this subsection, an approved medical officer reports to the Court that —

- (a) the person is still suffering from mental disorder (although not necessarily unfit to plead),
- (b) it would still be detrimental to his health to bring him before the Court at that time, and
- (c) he still requires in-patient treatment in a designated centre,

the Judge, if he is satisfied as to the matters so reported, may commit him, in his absence, to a designated centre for a period not exceeding such period as the approved medical officer states in his report as being, in his opinion, necessary for such treatment and not, in any case, exceeding 6 months.

(3) If the person is not represented in the Court by solicitor or counsel, the Judge shall not make an order of committal under *subsection (1)* or *(2)* without hearing oral evidence from the approved medical officer.

Unfitness to
plead: trial
of issue

16. (1) Where —

- (a) a person has been sent forward to a higher Court under *section 12* for trial of the issue whether he is unfit to plead by reason of mental disorder, or

EXPLANATORY NOTE

Section 17 corresponds to section 13.

- (b) that issue has been raised (whether by the Judge, the prosecution or the person charged) in the higher Court to which he has been sent forward for trial or sentence,

the provisions of this section shall have effect.

- (2) (a) The issue shall be tried without a jury.
- (b) If the Judge determines that the person is unfit to plead, he shall, if the person has been sent forward under *section 12*, notify the Justice of the District Court that the person is unfit to plead and in any other case, adjourn the proceedings and may, if there is oral evidence from an approved medical officer that the person is in need of in-patient treatment in a designated centre, commit him to a designated centre until an order is made by the Court under *section 25(3) or (4)*.
- (c) If the Judge determines that the person is fit to plead, he shall, if the person has been sent forward under *section 12*, notify the Justice that the person is fit to plead and send the person back to the District Court to be dealt with in accordance with law, and in any other case direct that the proceedings continue.

(3) The prosecution or the person charged may, subject to *section 19*, appeal to the Court of Criminal Appeal from a determination on a trial of an issue under this section.

Verdict of not guilty by reason of mental disorder

17. (1) Where a person is tried in a higher Court for an offence and the jury finds -

- (a) that he committed the act alleged against him,
- (b) that he was suffering at the time from mental disorder, and
- (c) that the mental disorder was such that he should not be found guilty of the offence,

the provisions of this section shall have effect.

- (2) (a) The jury shall find a verdict of not guilty by reason of mental disorder.

(b) If the Judge, having heard the evidence of an approved medical officer, is of opinion that the person may be in need of in-patient treatment in a designated centre or that there is a substantial risk that, if set at liberty, he may be dangerous to himself or to others, the Judge may commit him to a designated centre for a period not exceeding eight days and direct that during such period he be examined by another approved medical officer.

(3) That other approved medical officer shall, within the period of committal under *subsection (2)(b)*, report to the Court whether in his opinion –

- (a) the person committed is in need of in-patient treatment in a designated centre, or
- (b) there is a substantial risk that, if set at liberty, he may be dangerous to himself or to others.

(4) If the Judge, having considered the report and such other evidence as may be adduced, is satisfied that –

- (a) the person is in need of in-patient treatment in a designated centre, or
- (b) there is a substantial risk that, if set at liberty, he will be dangerous to himself or to others,

the Judge shall commit him to a designated centre until an order is made by the Court under *section 25(5)*.

(5) Subject to *section 19*, a person found not guilty by reason of mental disorder may appeal to the Court of Criminal Appeal against the verdict and against the order of committal under *subsection (4)*, if any, and the prosecution may appeal to that Court against any refusal of an order of committal under *subsection (4)*.

(6) The accused may plead not guilty by reason of mental disorder and, if the prosecution and the Judge accept that plea, the Judge shall enter a verdict accordingly.

(7) Where the mental disorder of the accused is raised by him or on his behalf as a defence to the charge and the Judge is satisfied that the prosecution has not had a reasonable opportunity to have the person examined by an approved medical officer, the Judge shall, if requested so to do by the prosecution, adjourn the case and direct that the person submit himself for such examination at a time and place specified by the Judge.

(8) If the accused fails to comply with a direction under *subsection (7)*, the Judge may commit him to a designated centre for a period not exceeding eight days to enable such examination to take place.

EXPLANATORY NOTE

Section 18 introduces a new verdict in the case of offences for which there is a mandatory sentence of death or penal servitude for life, namely, treason, capital murder and murder, where the responsibility of the accused for his act is substantially diminished. The proposal is to reduce the offence to treason reduced on the ground of diminished responsibility, or manslaughter on that ground, as the case may be, where the jury find that the accused was suffering at the time of the act proved against him from mental disorder and that the disorder, while not of such a degree or nature as to exculpate him, was such as to diminish substantially his responsibility for the act. This will release the Court from the obligation to impose a sentence of death (in a treason or capital murder case) or penal servitude for life (for murder) and enable the accused to be dealt with as the circumstances require, whether by prison sentence, detention for treatment in a designated centre, or release with or without conditions for supervision, or out-patient treatment.

The only existing recognition of diminished responsibility is to be found in the Infanticide Act, 1949. This provides for the case of a woman who causes the death of her child, being a child under twelve months. It enables the jury to return a verdict of infanticide, in lieu of murder, if it is satisfied that the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth or by reason of the effect of lactation consequent upon the birth. The punishment is as for manslaughter, thus giving a discretion to the Judge.

The Infanticide Act enables the prosecution to prefer a charge of infanticide rather than murder in the first instance, whereas in the proposed section on diminished responsibility the accused must be charged with murder, or capital murder, and the defence of diminished responsibility must be raised by him. The medical assumptions upon which the Infanticide Act is based have been adversely criticised. Nonetheless, on humane grounds, the Committee favours its retention. The alternative would be to merge the offence of "infanticide" with that of "manslaughter on the ground of diminished responsibility". This would involve enabling the latter charge to be brought initially instead of murder (or capital murder) and this the Committee is not prepared to recommend. Instead, the Committee recommends that the accused be dealt with, as already described, in the same manner as if she had been found guilty of manslaughter on the ground of diminished responsibility.

Diminished
responsibility

18. (1) Where a person is tried for treason, capital murder or murder and the jury finds —

- (a) that he committed the act alleged against him,
- (b) that he was suffering at the time from mental disorder, and
- (c) that the mental disorder was not such as to justify finding him not guilty by reason of mental disorder, but was such as to diminish substantially his responsibility for the act,

the jury may find him not guilty of that offence but—

- (i) where the offence charged is treason, guilty of treason reduced on the ground of diminished responsibility;
- (ii) where the offence charged is capital murder or murder, guilty of manslaughter on the ground of diminished responsibility.

(2) On a charge of an offence mentioned in *subsection (1)*, the onus of establishing diminished responsibility shall lie on the defence.

(3) A person convicted under *subsection (1)* may be sentenced to imprisonment for life or for any lesser term or committed by the Judge to a designated centre until further order or be ordered by the Judge to be released subject to such conditions as the Judge may impose.

(4) Where —

- (a) on a trial for treason, the accused desires to plead guilty to treason reduced on the ground of diminished responsibility, or
- (b) on a trial for capital murder or murder, the accused desires to plead guilty to manslaughter on the ground of diminished responsibility,

and the prosecution consents, the Court may receive evidence as to the mental condition of the accused at the time of the alleged offence, and if the Judge is satisfied that the accused was suffering at the time from mental disorder such as to justify a verdict under *subsection (1)* he shall enter a verdict accordingly.

EXPLANATORY NOTE

Section 19 provides for appeals in the usual form.

EXPLANATORY NOTE

PART IV

MENTAL CARE OF PERSONS IN DETENTION

Section 20 proposes the setting up of a Mental Care Review Body. Broadly speaking, its function would be threefold: first, to act as a reference body to which the mental condition of a person who has come before a court may be referred for review in cases stipulated in this Part, secondly, to review the

(5) Where the mental disorder of a person charged with an offence mentioned in *subsection (1)* is raised by him or on his behalf as a defence to the charge and the Judge is satisfied that the prosecution has not had a reasonable opportunity to have the person examined by an approved medical officer, the Judge shall, if requested so to do by the prosecution, adjourn the case and direct that the person submit himself for such examination at a time and place specified by the Judge.

(6) If the person fails to comply with a direction under *subsection (5)* the Judge may commit the person to a designated centre for a period not exceeding eight days to enable such examination to take place.

(7) A woman found guilty of infanticide may be dealt with in accordance with *subsection (3)* of this section and *subsection (3)* of section 1 of the Infanticide Act, 1949, is accordingly amended by the substitution, for "and may for that offence be tried and punished as for manslaughter", of "and may for that offence be tried as for manslaughter and, on conviction, may be dealt with under *section 18(3) of the Criminal Justice (Mental Illness) Act, 19* as if she had been found guilty of manslaughter on the ground of diminished responsibility."

Appeals to
Court of
Criminal
Appeal

19 (1) An appeal from a determination under *section 16(2)(a)*, a verdict under *section 17(2)*, an order of committal, or the refusal of such order, under *section 17(4)* or an order under *section 27(2)(3)* or (4), shall lie to the Court of Criminal Appeal under the following conditions:

- (a) if the appellant obtains a certificate from the Judge of the Court in which the decision was given that the case is a fit case for appeal;
- (b) in case of refusal of such certificate, if the Court of Criminal Appeal on appeal from such refusal grants leave to appeal.

(2) The Court of Criminal Appeal shall have jurisdiction to make such order as may be necessary for the purpose of doing justice in any case before it by virtue of this Act.

PART IV

MENTAL CARE OF PERSONS IN DETENTION

Mental Care Review Body

Mental Care
Review Body

20. (1) There shall be a Mental Care Review Body to consider references made to it under this Act as to the

detention of persons in designated centres or a special unit and, thirdly, to ensure that persons will not be released unless, on a full appraisal of their mental condition, it is clear that they are fit to be released. Its general purpose is to ensure that persons are neither unnecessarily detained nor prematurely released, and that, where further detention is needed, it is in a suitable institution and that the person concerned is receiving proper care and attention. The body would consist of nominees of the Minister for Health and of the Minister for Justice and of psychiatrists nominated by the Royal College of Psychiatrists (Irish Division).

In the exercise of its function it is to have regard to the welfare and safety of the person concerned and of other inmates and the staff of the institution involved, as well as to the public interest (*Section 21*). Any person detained under the Bill (except for a brief period for in-patient assessment) would have the right, at specified intervals, to apply to the Review Body for reconsideration of his case, and to report its opinion to the court which has seisin of the case or to the President of the High Court, as may be appropriate (*Section 22*).

mental health of persons who come before a Court in criminal matters and to review the detention of persons in designated centres or special units pursuant to this Act.

(2) The Mental Care Review Body (in this Act referred to as the Review Body) shall consist of —

- (a) a chairman and deputy chairman appointed by the Minister for Health after consultation with the Minister for Justice,
- (b) one member and one substitute member appointed by the Minister for Health,
- (c) one member and one substitute member appointed by the Minister for Justice, and
- (d) two members appointed by the Minister for Health from a panel of five psychiatrists nominated by the Executive Council of the Royal College of Psychiatrists (Irish Division).

(3) A person shall not be appointed to be chairman or deputy chairman unless he is or has been a barrister or solicitor who has practised his profession for at least ten years.

(4) The provisions of the *First Schedule* shall apply to the Review Body.

Exercise of functions

21. In the exercise of its functions the Review Body shall have regard to the welfare and safety of the person concerned and of other inmates and the staff of any institution involved and to the public interest.

Applications to Review Body for review of detention in designated centre or special unit

22. (1) A person detained in a designated centre or special unit pursuant to any provision of this Act other than *sections 10(3)(b)* and *14(2)(b)* shall have the right to apply to the Review Body for a review of his detention and thereafter, at intervals of not less than 12 months after the date of a decision under this section on any previous application or at such earlier time as the appropriate Court may for good cause allow, so long as he remains in detention.

(2) It shall be the duty of the Review Body to consider every application and, having made such enquiries as it thinks proper, to report its opinion to the appropriate Court.

(3) If the Court, on consideration of the report of the Review Body, is of the opinion that the prisoner should not be further so detained, it may make such order in relation to the custody or release of the person as the Court thinks proper.

EXPLANATORY NOTE

Section 23, with a view to assisting the Review Body in the exercise of its functions, provides for the furnishing of reports by the Chief Medical Officer of every institution on every person in detention in the institution and of every new admission.

EXPLANATORY NOTE

Sections 24 and 25 provide the machinery for transfer of prisoners to designated centres for treatment and for the return to prison for trial of persons committed to a designated centre who appear to be no longer unfit to plead or where it would no longer be detrimental to their health to bring them before the Court.

(4) The appropriate Court for the purposes of this section shall, in the case of a person detained in respect of an offence of which he has been convicted by the President of the High Court or a Judge of the High Court nominated by him and, in any other case, be the Court which made the original order for his detention.

(5) In any case not specifically provided for in this Act, where the question arises before the Court as to whether a person detained pursuant to this Act should be released the Court may refer the question to the Review Body for its report.

Reports to
Review Body

23. (1) The chief medical officer of every designated centre or special unit shall prepare a report in relation to every person detained pursuant to this Act in the institution at the commencement of this Act giving information as to the authority under which that person is detained, his state of health, both general and mental, and such other particulars as may be prescribed, and shall, as soon as may be, send the report to the Review Body.

(2) The chief medical officer of every such institution shall inform the Review Body forthwith of every new admission of a person detained in the institution pursuant to this Act.

(3) The chief medical officer of every such institution shall make an annual report to the Review Body in relation to every person for the time being detained in the institution pursuant to this Act who has been so detained throughout the preceding twelve months.

Designated centres

Transfer of
prisoner to
or from
designated
centre

24. (1) (a) Where it is certified in accordance with *paragraph (b)* that a prisoner is, by reason of mental disorder, in need of in-patient treatment in a designated centre, the Minister for Justice may by order direct his transfer to and detention in a designated centre for such treatment.

(b) A certificate shall be signed by an approved medical officer and by a medical officer of the prison in which the prisoner is detained.

(2) An order under *subsection (1)* shall be for a period expiring not later than —

(a) in the case of a prisoner on remand —
the expiration of the period of remand,

EXPLANATORY NOTE.

See note on *Section 24*.

- (b) in the case of a prisoner sent forward for or awaiting trial or sentence — the time appointed for his trial or sentence,
- (c) in the case of a prisoner serving a sentence — the unexpired period of his sentence.

(3) The Minister for Justice may revoke an order under *subsection (1)* and direct the return of the prisoner to prison.

(4) Where an order is made in relation to a prisoner on remand, or sent forward for or awaiting trial or sentence, the Governor of the prison shall, as soon as may be, cause the Court before which the prisoner is to appear to be notified of the making and execution of the order and shall furnish to the Court a copy of the certificate referred to in *subsection (1)*.

(5) The Minister for Justice, if he considers it necessary that a prisoner be psychiatrically assessed, may on the advice of a medical officer of the prison by order direct the transfer of the prisoner to a designated centre for that purpose.

Return to Court
of person
detained in
designated
centre

25. (1) In this section "patient" means a person detained in a designated centre pursuant to this Act.

(2) Where the chief medical officer of a designated centre is of the opinion in relation to a patient detained pursuant to *section 11* or *15* that it would no longer be detrimental to the patient's health to bring him before the Court, he shall forthwith notify the Court which committed the patient to the centre of his opinion and the Court shall thereupon order that the patient be brought before it, as soon as may be, to be dealt with in accordance with law.

(3) Where the chief medical officer of a designated centre is of the opinion in relation to a patient detained pursuant to *section 12* or *16* that the patient is no longer unfit to plead, he shall forthwith notify the Court which committed the patient to the centre of his opinion and the Court shall thereupon order that the patient be brought before it, as soon as may be, to be dealt with in accordance with law.

(4) Where the chief medical officer of a designated centre, having consulted the Review Body, is of the opinion in relation to a patient detained pursuant to *section 12* or *16* that the patient, although still unfit to plead, is no longer in need of in-patient treatment at the centre, he shall forthwith notify the Court which committed the patient to the centre of his opinion and the Court shall make such order as it thinks proper for the patient's disposition, whether for further care and treatment in that or another designated centre or for his discharge whether unconditionally or subject to conditions for out-patient treatment or supervision or both.

EXPLANATORY NOTE

Section 26 deals with the problem which arises when a convicted person who is suffering from mental disorder is due for release. The Mental Treatment Act, 1945, which is applicable in general to such persons provides for the making of an application for the reception and detention of such a person in a district mental hospital but this procedure presupposes that the person concerned is not in detention and is not apt in relation to a person whose prospective release at the end of his period of sentence gives rise to serious apprehension of danger, whether to the person himself or to the community. This section accordingly proposes an alternative procedure for his continued detention for care and treatment or his release under supervision.

EXPLANATORY NOTE

Section 27 provides for a new, specialised institution (a "special unit") as a suitable place for the detention of persons suffering from violent personality disorder. Power is given to the Court to direct that, where such a person is convicted of an offence, his sentence shall be served in the special unit. Where a violent personality disorder only comes to notice during a prisoner's term in prison, the section makes provision for his transfer to a special unit to serve the rest of his sentence. In either case, his detention would be subject to review and provision is made for his retransfer to prison where the circumstances so warrant.

(5) Where the chief medical officer of a designated centre, having consulted the Review Body, is of the opinion in relation to a patient detained pursuant to *section 13(4)* or *17(4)* that he is no longer in need of in-patient treatment or there is no longer the substantial risk referred to in the relevant provision, he shall forthwith notify the Court which committed the patient to the centre of his opinion and the Court shall thereupon order that the patient be brought before it, as soon as may be, and shall determine the question whether or not such treatment is still required or such substantial risk still exists, in the same manner as if that question were being determined pursuant to the relevant section.

Detention of
person in
designated
centre after
completion of
sentence

26. (1) Where a person is detained in a designated centre in respect of an offence of which he has been convicted and the chief medical officer of the institution is of opinion that, by reason of mental disorder, he would, if released at the end of the period of detention, be dangerous to himself or to others, the chief medical officer shall report accordingly to the President of the High Court.

(2) If the President of the High Court, having considered a report of the Review Body, such evidence as may be adduced and any representations made by the Director of Public Prosecutions or by or on behalf of the person detained, is satisfied, for the reason mentioned in *subsection (1)*, that it would be proper so to do, the President may order that, on the expiration of the period of detention, he shall continue to be detained in the designated centre or that he shall be transferred to such other designated centre as the President thinks proper or that he be released subject to such conditions as the President may impose.

(3) Whenever the Review Body is of opinion that the person's further detention should be reviewed by the President of the High Court, it shall report accordingly to the President and the President may review the detention and make such further order for the detention of the person, either in the place where he is for the time being detained or in such designated centre as the President may direct, or for his release, whether unconditionally or subject to conditions as the President thinks proper.

Special units for cases of violent personality disorder

Special unit

27. (1) The Minister for Justice may designate a place for the detention of persons suffering from violent personality disorder and a place so designated is in this Part referred to as a special unit.

(2) Where a person is convicted by a Court of an offence and the Court is satisfied that the person is suffering from violent personality disorder, the Court may, on imposing sentence, direct that it be served in a special unit and order the person's detention therein for the period of the sentence.

EXPLANATORY NOTE

Section 28 proposes to give an important new jurisdiction to the President of the High Court. At present, when a person has completed the term of his sentence for an offence he must be released notwithstanding that he may in fact be suffering from violent personality disorder. The section imposes a duty on the Review Body to review the case of every person detained, by reason of such disorder, in a special unit and to report the result to the President of the High Court if it appears to the Review Body that the case is proper for the President's consideration. The President is empowered, after a full hearing, to order the person's continued detention if satisfied that his release would create a situation of danger for himself or others. In this, as in other cases of detention, the Review Body would keep the person's detention under review and report, as it thought proper, to the President of the High Court.

(3) Where, on the application of the Director of Public Prosecutions to have a person serving sentence in a prison transferred to a special unit, the Court which imposed sentence is satisfied that the person is suffering from violent personality disorder, the Court may direct that the remainder of the sentence be served in a special unit and order the person's transfer thereto.

(4) Where a person is in detention in a special unit the Court may, if satisfied that the circumstances so warrant, order that he be transferred to a prison.

(5) For the purposes of *subsections (2), (3) and (4)*, the Court shall hear the evidence of at least two approved medical officers, such other evidence as may be adduced and any representations made by or on behalf of the said person.

(6) Subject to *section 19*, an appeal shall lie to the Court of Criminal Appeal from an order under *subsection (2), (3) or (4)*.

Detention of
person in special
unit after
completion
of sentence

28. (1) The Review Body shall consider, in relation to every person detained in a special unit, whether by reason of violent personality disorder he would, if released at the end of his sentence, be dangerous to himself or to others.

(2) If the Review Body, having considered any representations made by or on behalf of the person detained or made by the Director of Public Prosecutions and such evidence as may be adduced, is of opinion that it would be proper so to do, the Review Body shall furnish a report on the matter to the President of the High Court.

(3) If the President of the High Court, having considered the report of the Review Body, any representations made by or on behalf of the person detained or made by the Director of Public Prosecutions and such evidence as may be adduced, is satisfied that, for the reason mentioned in *subsection (1)*, it would be proper so to do, the President may order that, on the completion of the period of sentence, that person shall continue to be detained in the special unit or that he be released subject to such conditions as the President may impose.

(4) Where the President of the High Court, of his own motion or on a report of the Review Body or otherwise, is satisfied that it would be proper to do so, he may review the detention and make such further order for the detention of the person either in the place where he is for the time being detained or in such special unit or designated centre as the President may direct, or for his release whether unconditionally or subject to conditions as the President thinks proper.

EXPLANATORY NOTE

Subsection (1) of section 29 provides a limited exception to the general rule that justice shall be administered in public. The exception is made solely to protect the privacy of the person whose continued detention is sought. Consequently, the subsection provides that he may waive this protection and require a public hearing.

EXPLANATORY NOTE

Sections 30 and 31 provide for the temporary and conditional release or the transfer of a person in detention. *Section 30* is to be read subject to any restrictions imposed under any other provision of the Bill and, in particular, to the power given by *section 31* to a court ordering detention to impose restrictions on the discretion of the head of an institution to release a person if, in the court's opinion, the person, if set at liberty, would be dangerous to himself or to others.

EXPLANATORY NOTE

PART V

MISCELLANEOUS

Section 32 makes it clear that a Special Criminal Court may exercise any jurisdiction given to a Court under Part II or Part III of the Bill.

*Designated centres and special units:
general provisions -*

Proceedings under sections 26 and 28 29. (1) Proceedings under *section 26* or *28* may be held in camera unless the person detained or a person acting on his behalf otherwise requires.

(2) The powers vested in the President of the High Court by *section 26* or *28* may be exercised by any Judge of the High Court nominated by him.

Conditional release 30. (1) Save where otherwise provided by or under this Act, the chief medical officer of a designated centre or special unit may order the release of a person in detention on such conditions and for such period as he thinks proper.

(2) Before doing so, he may refer the question to the Review Body for its consideration.

Release or transfer of patient in designated centre or special unit 31. (1) A Court ordering the detention of a person in a designated centre or special unit following upon his conviction of an offence, his acquittal by reason of mental disorder or his being found unfit to plead by reason of mental disorder may direct in the order that he shall not be released (save for such exceptional reasons as may be specified in the order) from the institution without the consent of the Court where it appears to the Court that the person if set at liberty would, by reason of mental disorder or violent personality disorder, be dangerous to himself or to others.

(2) Subject to *subsection (1)*, the Minister for Health may where he is satisfied on consideration of the report of an approved medical officer and of the Review Body that a person detained in a designated centre or special unit should, in the interest of his health or well-being or by reason of his behaviour or tendencies, be transferred to another such institution, transfer him to such designated centre or special unit as the Minister directs.

PART V

MISCELLANEOUS

Jurisdiction of Special Criminal Court 32. Without prejudice to the Criminal Justice (Verdicts) Act, 1976, a Special Criminal Court established under Part V of the Offences Against the State Act, 1939, shall have jurisdiction, in relation to any proceedings, before it, to exercise any function conferred by this Act on the District Court or a higher Court or on a jury, as may be appropriate.

EXPLANATORY NOTE

Section 33 provides for the continuance of the Central Mental Hospital, which was transferred to the administration of the Eastern Health Board by section 44 of the Health Act, 1970. The intention is that the hospital will in future operate fully as a district mental hospital under the Mental Treatment Act, 1945, and may be recognised by the Minister for Health as a "designated centre" for the purposes of this Bill, thus enabling persons to be sent to it, or transferred to it, under the Bill for the specialised treatment and services which it is equipped to deal with. The section, which replaces the temporary arrangements made by section 44 of the Health Act, 1970, is technically required because of the proposed repeal of the Central Criminal Lunatic Asylum (Ireland) Act, 1845, which established the institution, under its original title (altered only in 1961 by the Mental Treatment Act of that year) — the Central Criminal Lunatic Asylum. The essential function of the original institution was to provide for the custody of persons ordered to be detained as "criminal lunatics" during the Royal pleasure. Neither the change of title nor the transfer of its administration to a health authority could change its character, although each possibly contributed to the re-education of public opinion in regard to the nature of "lunacy". The recognition in this draft Bill of mental disorder as an illness or incapacity deserving of hospital treatment, and the replacement of the insensitive special verdict of "guilty", notwithstanding "insanity", by the finding of not guilty by reason of mental disorder, will enable the Central Mental Hospital to take its proper place as the principal mental hospital for the care and treatment of persons who come before the courts, and enable its specialist services to be fully developed and to be availed of by the district mental hospitals throughout the country.

EXPLANATORY NOTE

Section 34 is designed to safeguard the confidentiality of medical reports. In giving the Court a discretion as to publication, the intention is that the Court will have regard, first, to the interest of the subject himself, and secondly to the legitimate public interest.

EXPLANATORY NOTE

Section 35 is designed to alert the Registrar of Wards of Court where a person suffering from mental disorder may require protection for himself or his property by being made a ward of court.

EXPLANATORY NOTE

Section 36 provides for legal aid, regardless of means, for a defendant where the issue of fitness to plead is raised or where the question arises whether he is suffering from mental disorder (although not necessarily unfit to plead) and requires in-patient treatment before being brought before the Court. Legal aid is already provided under the Criminal Justice (Legal Aid) Act, 1962, on the trial of a criminal charge but subject to a means test.

The Central
Mental
Hospital

33. (1) The Central Mental Hospital (in this section referred to as "the Hospital") as constituted immediately before the commencement of this Act shall continue in being under that title.

(2) The Hospital, the administration of which was transferred to the Eastern Health Board by order under section 44 of the Health Act, 1970, shall continue to be administered by the Board and shall be deemed to be a hospital maintained by the Board under section 38 of that Act.

(3) The Minister may, with the concurrence of the Minister for Finance, arrange for functions relating to the repairing, enlarging, improving, upholding or furnishing of the Hospital to be performed by the Eastern Health Board.

(4) Every person who, immediately before the commencement of this Act, was detained in the Hospital shall continue to be so detained until other provision is made in his regard in accordance with law, and the validity of any warrant, order, direction or other instrument under which he was so detained shall not be affected by the repeal of any enactment by this Act.

Restriction on
publication of
medical reports
made to Court

34. Without prejudice to the provisions of section 17 of the Criminal Procedure Act, 1967 (which prohibits the publication of information as to the preliminary examination of an accused person) no person shall publish or cause to be published any information as to a medical examination or medical report submitted or to be submitted to a Court under any provision of this Act, otherwise than by leave of the Court.

Report to
Registrar of
Wards of Court

35. Where a person is charged before a Court and the Court finds that he is suffering from mental disorder the Court may, if it considers it desirable in his interest, cause a report in relation to that person to be sent to the Registrar of Wards of Court.

Assignment of
solicitor and
counsel

36. (1) If a person charged with an offence is not represented in court by solicitor or counsel, then, for the purpose of proceedings under *section 11, 12, 15 or 16*, the Court may, of its own motion, grant a certificate in respect of that person for free legal aid and thereupon he shall be entitled to such aid and to have a solicitor and (where the Court thinks fit) counsel assigned to him for that purpose and such counsel or solicitor shall be deemed to have been

EXPLANATORY NOTE

Section 38 ensures that persons passing between a designated centre or special unit will be escorted in proper custody.

EXPLANATORY NOTE

Section 39 is designed to ensure that the prosecution, or the court itself, will not be taken unfairly by surprise by the production of mental evidence on behalf of the accused.

EXPLANATORY NOTE

Sections 40 and *41* repeat, generally, provisions applicable to convicted persons. *Subsection (2)* of *section 40* qualifies the charge of being unlawfully at large by adding "without reasonable excuse".

assigned under the Criminal Justice (Legal Aid) Act, 1962, and "certificate" in section 10 of that Act shall include a certificate under this subsection.

(2) Where a legal aid certificate has been granted in respect of a person under *subsection (1)* any fees, costs or other expenses properly incurred in preparing and conducting his case shall, subject to the regulations under section 10 of the said Act, be paid out of moneys provided by the Oireachtas.

Adjournment
of
proceedings

37. (1) A Court may at any time adjourn the hearing of proceedings against any person for such period as the Court thinks proper if satisfied that the person is, by reason of mental disorder, unable to enter into a recognisance.

(2) A period of adjournment under *subsection (1)* shall not be for more than six months.

(3) During a period of adjournment, the Court may, if satisfied that the reason for the adjournment no longer exists, discharge the order for adjournment and direct that the person be brought before the Court to be dealt with in accordance with law.

Escort of
persons between
court and
designated
centre or
special unit

38. A person who is to be brought to a Court from a designated centre or special unit or to be returned to the centre or unit may be placed in the custody of a member of the Garda Síochána who may, if he so requests, be assisted by a nurse or other suitably qualified attendant in bringing the person to his destination.

Notice of
evidence of
mental state

39. Without prejudice to any other provision of this Act, in any proceedings against a person for an offence evidence shall not without leave of the Court be adduced as to the mental state of the accused unless notice of intention to do so is given on his behalf to the prosecution in such form and within such period as rules of court may provide.

Persons
unlawfully
at large

40. (1) A person who, by reason of having been temporarily released from a designated centre or special unit, is at large shall be deemed to be unlawfully at large if —

- (a) the period for which he was temporarily released has expired, or
- (b) a condition to which his release was made subject has been broken.

(2) A person who is unlawfully at large without reasonable excuse shall be guilty of an offence and on summary conviction thereof shall be liable to imprisonment for a term not exceeding 6 months.

EXPLANATORY NOTE

Section 42 extends the benefit of the proposed provisions to prisoners and to persons detained in the Central Mental Hospital or in a district mental hospital when the Bill comes into operation. It also ensures the continuance of orders, warrants and other instruments relating to detention and custody, notwithstanding the repeal of existing legislation. *Subsection (4)* gives the President of the High Court (or a Judge nominated by him) jurisdiction to deal with exceptional cases.

(3) Where, by reason of the breach of a condition to which his release was made subject, a person is deemed to be unlawfully at large and is retaken under *section 41* or otherwise, the period for which he was temporarily released shall thereupon be deemed to have expired.

(4) The currency of the term of sentence of a person who is unlawfully at large for any period shall be suspended in respect of the whole of that period.

Retaking on
escape

41. Without prejudice to any other power conferred by law, a member of the Garda Síochána or an officer or servant of the designated centre or special unit may retake any person whom he suspects to be unlawfully at large while subject to an order for his detention in a designated centre or special unit and bring him back to such centre or unit.

Application of
Act to existing
detentions

42. (1) Where at the commencement of this Act a person is for the time being detained pursuant to an order of a Court —

- (a) in the Central Mental Hospital, or
- (b) in a hospital maintained by a health board under section 38 of the Health Act, 1970,

he shall be entitled to the benefit of the provisions of this Act and the said provisions shall apply to him if he were a person so detained pursuant to an order of the Court made under this Act.

(2) For the purpose of *subsection (1)* a person detained in the Central Mental Hospital, having been found insane on arraignment, shall be treated as a person detained under *section 16* and a person so detained, having been found guilty but insane, shall be treated as a person detained under *section 17*.

(3) Without prejudice to section 21 of the Interpretation Act, 1937, the repeal of any enactment by this Act shall not affect the validity of any warrant, order, direction or other instrument for the detention of any person made thereunder.

(4) Any person aggrieved by the applicability of this section to him may apply to the President of the High Court or a Judge of the High Court nominated by him, who shall have jurisdiction to dispose of the proceedings by varying the order under which he is detained so as to make the appropriate provisions of this Act applicable to him.

EXPLANATORY NOTE

Section 43 amends the law as to courtmartial in conformity with the new proposals.

Consequential amendment of sections 202 and 203 of Defence Act, 1954

43. The Defence Act, 1954, is hereby amended by the substitution, for sections 202 and 203 thereof, of the sections set out in the following Table.

TABLE

Mental disorder of accused at time of trial

202. (1) Where at the trial by court-martial of a person charged with an offence it appears that such person is by reason of mental disorder unfit to take his trial, the following provisions shall have effect —

- (a) the court-martial shall find specially that fact;
- (b) such person shall be kept in custody in the prescribed manner until the directions of the Minister thereon are known or until any earlier time at which such person is fit to take his trial;
- (c) the Minister may give orders for the safe custody of such person during his pleasure in such place and in such manner as he thinks fit.

(2) A finding under this section shall be subject to confirmation in like manner as any other finding.

(3) In this section and in section 203 of this Act the expression "mental disorder" has the meaning assigned by section 4 of the *Criminal Justice (Mental Illness) Act, 198*.

Mental disorder of accused at time of commission of offence

203. (1) Where at the trial by court-martial of a person charged with an offence it appears that such person did the act or made the omission charged, but was, at the time when he did the said act or made the said omission, suffering from mental disorder and that the mental disorder was such that he should not be found guilty of the offence, the following provisions shall have effect —

- (a) the court-martial shall find specially that the accused did the act or made the omission charged but is not guilty of the offence by reason of mental disorder;
- (b) such person shall be kept in custody in the prescribed manner until the directions of the Minister thereon are known;
- (c) the Minister may give orders for the safe custody of such person during his pleasure in such place and in such manner as he thinks fit.

(2) A finding under this section shall be subject to confirmation in like manner as any other finding.

MENTAL CARE REVIEW BODY

1. In this Schedule, unless the context otherwise requires, "member" includes the chairman, the deputy chairman and a substitute member.
2. (1) Each member, other than a person appointed to fill a casual vacancy, shall be appointed for a period of three years.
(2) A member appointed to fill a casual vacancy shall be appointed for the remainder of the term for which his predecessor, if he had continued to be a member, would have held office.
(3) An outgoing member may be re-appointed.
3. (1) A member may resign his office.
(2) The Minister for Health, after consultation with the Minister for Justice, may remove a member from office for stated cause.
4. (1) The chairman shall preside over all meetings at which he is present. In his absence, the deputy chairman shall take his place. The deputy chairman shall not be entitled to attend a meeting except when so acting.
(2) A substitute member shall be entitled to attend a meeting in the absence of the member for whom he is the substitute, but not otherwise.
5. (1) The quorum for a meeting shall be the chairman or deputy chairman and two other members, one of whom shall be a psychiatrist appointed under *section 20(2)(d)*.
(2) All meetings shall be held in private.
6. (1) The Review Body shall make all necessary enquiries for the fulfilment of its functions.
(2) A member or members may, if so authorised by the Review Body, visit any designated centre or special unit on its behalf at all reasonable times for the purpose of making enquiries in regard to any person detained therein and the chief medical officer shall, if so requested, permit the member or members to interview that person, subject to such precautions as the chief medical officer thinks proper.
7. The Minister for Health shall, after consultation with the Review Body and the Minister for the Public Service, provide the Review Body with such staff as it may require.

EXPLANATORY NOTE

Repeals. All the existing relevant statute law relating to mental disorder in criminal cases is proposed for repeal, with the exception of the Infanticide Act, 1949.

Section 9

SECOND SCHEDULE

ENACTMENTS REPEALED

Session and Chapter or Number and Year	Short Title or Subject	Extent of Repeal
39 & 40 Geo. 3 c. 94	Criminal Lunatics (1800)	The whole Act, so far as applicable
1 & 2 Geo. 4 c. 33	Lunacy (Ireland) Act, 1821	The whole Act
11 Geo. 4 c. 22	Richmond Asylum (1830)	The whole Act
1 Wm. 4 c. 13	Richmond Asylum (1830)	The whole Act
1 & 2 Vict. c. 27	Lunacy (Ireland) Act, 1837	The whole Act
8 & 9 Vict. c. 107	Central Criminal Lunatic Asylum (Ireland) Act, 1845	The whole Act
38 & 39 Vict. c. 67	Lunatic Asylums (Ireland) Act, 1875	The whole Act
46 & 47 Vict. c. 38	Trial of Lunatics Act, 1883	The whole Act
47 & 48 Vict. c. 64	Criminal Lunatics Act, 1884	The whole Act
60 Vict. c. 37	Richmond District Asylum Act, 1897	The whole Act
1 Edw. 7 c. 17	Lunacy (Ireland) Act, 1901	The whole Act
No. 27 of 1960	Criminal Justice Act, 1960	Sections 3, 8
No. 1 of 1970	Health Act, 1970	Section 44