



Number 40 of 2010

CRIMINAL LAW (INSANITY) ACT 2010

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[No. 40.] *Criminal Law (Insanity) Act 2010.* [2010.]

ACTS REFERRED TO

Criminal Justice Act 2006	2006, No. 26
Criminal Law (Insanity) Act 2006	2006, No. 11
Criminal Procedure Act 1967	1967, No. 12
Defence (Amendment) Act 2007	2007, No. 24
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Number 40 of 2010

CRIMINAL LAW (INSANITY) ACT 2010

AN ACT TO AMEND THE CRIMINAL LAW (INSANITY) ACT 2006; TO AMEND THE DEFENCE ACT 1954; AND TO PROVIDE FOR RELATED MATTERS.

[22nd December, 2010]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act “Act of 2006” means the Criminal Law (Insanity) Act 2006. Definition.

2.—The definition of “patient” in section 1 of the Act of 2006 is amended by the substitution of “13, 13A, 13B” for “13”. Definition of “patient” in section 1 of Act of 2006.

3.—Section 3 of the Act of 2006 is amended by the insertion of the following subsection after subsection (2): Minister may designate psychiatric centres as designated centres for certain purposes.

“(2A) Notwithstanding the generality of subsection (2), the Minister for Health and Children by order may after consultation with the Mental Health Commission, designate a psychiatric centre as a designated centre for the reception and, where appropriate, detention, examination and, where appropriate, care and treatment of persons or classes of persons committed or directed thereto by the District Court under section 4(6)(a) for examination.”.

4.—Section 4 of the Act of 2006 is amended— Amendment of section 4 of Act of 2006.

(a) in subsection (3), by the insertion of the following paragraph after paragraph (a):

“(aa) In a case to which paragraph (a) relates, the Court may request evidence of an approved medical officer to be adduced before it in respect of the accused person for the purposes of—

- (i) determining whether to adjourn the proceedings until further order to facilitate the accused person in accessing any care or treatment necessary for the welfare of the person,
- (ii) making a determination as to whether or not the accused person is fit to be tried, or

- (iii) exercising a power referred to in subsection (6)(a).”,
- (b) in subsection (3)(b)(i)—
 - (i) by the substitution of “subsection (6)(b)” for “subsection (6)”, and
 - (ii) by the insertion of “or 13A” after “section 13”,
- (c) in subsection (3)(b)(ii), by the substitution of “subsection (6)(b)” for “subsection (6)”,
- (d) in subsection (5), by the insertion of the following paragraph after paragraph (b):
 - “(bb) In a case to which paragraph (a) relates, the court may request evidence of an approved medical officer to be adduced before it in respect of the accused person for the purposes of—
 - (i) determining whether to adjourn the proceedings until further order to facilitate the accused person in accessing any care or treatment necessary for the welfare of the person,
 - (ii) making a determination as to whether or not the accused person is fit to be tried, or
 - (iii) exercising a power referred to in subsection (6)(a).”,
- (e) in subsection (5)(c)(i)—
 - (i) by the substitution of “subsection (6)(b)” for “subsection (6)”, and
 - (ii) by the insertion of “or 13A” after “section 13”,
- (f) in subsection (5)(c)(ii), by the substitution of “subsection (6)(b)” for “subsection (6)”, and
- (g) by the substitution of the following subsection for subsection (6):
 - “(6) (a) For the purposes of determining whether or not to exercise a power under subsection (3)(b)(i) or (ii) or subsection (5)(c)(i) or (ii), the court, having considered the evidence of an approved medical officer adduced before it in respect of the accused person—

- (i) may for that purpose—
 - (I) commit the accused person to a designated centre for a period of not more than 14 days, or
 - (II) by order direct that the accused person attend a designated centre as an out-patient on such day or days as the court may direct within a period of 14 days from the date of the making of the order,

and

- (ii) shall direct that the accused person concerned be examined by an approved medical officer at the designated centre.
- (b) Within the period authorised by the court under this subsection, the approved medical officer who examined the accused person pursuant to subparagraph (ii) of paragraph (a) shall report to the court on whether or not in his or her opinion the accused person is—
- (i) suffering from a mental disorder (within the meaning of the Act of 2001) and is in need of in-patient care or treatment in a designated centre, or
 - (ii) suffering from a mental disorder or a mental disorder (within the meaning of the Act of 2001) and is in need of out-patient care or treatment in a designated centre.”.

5.—Section 5 of the Act of 2006 is amended, in subsection (2), by the insertion of “or 13A” after “section 13”.

Amendment of section 5 of Act of 2006.

6.—Section 11 of the Act of 2006 is amended, in subsection (2), by the substitution of “whose detention or conditions of discharge it reviews or whose application for unconditional discharge it determines” for “whose detention it reviews”.

Amendment of section 11 of Act of 2006.

7.—Section 13 (amended by section 197 of the Criminal Justice Act 2006) of the Act of 2006 is amended—

Amendment of section 13 of Act of 2006.

- (a) in subsection (4), by the substitution of “whether for further detention, care or treatment in a designated centre, for his or her conditional discharge under section 13A or for his or her unconditional discharge” for “whether for further detention, care or treatment in a designated centre or for his or her discharge whether unconditionally or subject to conditions for out-patient treatment or supervision or both”,
- (b) in subsection (6), by the substitution of “whether for further detention, care or treatment in a designated centre, for his or her conditional discharge under section

13A or for his or her unconditional discharge” for “whether for further detention, care or treatment in a designated centre or for his or her discharge whether unconditionally or subject to conditions for out-patient treatment or supervision or both”,

- (c) in subsection (7)(b), by the substitution of “whether for further detention, care or treatment in a designated centre, for his or her conditional discharge under section 13A or for his or her unconditional discharge” for “whether for further detention, care or treatment in a designated centre or for his or her discharge whether unconditionally or subject to conditions for out-patient treatment or supervision or both”, and
- (d) in subsection (8), by the substitution of “whether for further detention, care or treatment in a designated centre, for his or her conditional discharge under section 13A or for his or her unconditional discharge” for “whether for further detention, care or treatment in a designated centre or for his or her discharge whether unconditionally or subject to conditions for out-patient treatment or supervision or both”.

Conditional
discharge order.

8.—The Act of 2006 is amended by the insertion of the following sections after section 13:

“Persons may
be discharged
subject to
conditions, etc.

13A.—(1) Subject to subsection (2), the Review Board may, when reviewing the detention of a patient under section 13, make an order for the discharge of the patient subject to such conditions, including conditions relating to out-patient treatment or supervision or both, as it considers appropriate (in this Act referred to as a ‘conditional discharge order’).

(2) The Review Board shall not make a conditional discharge order in respect of a patient until it is satisfied that such arrangements as appear necessary to the clinical director of the designated centre concerned have been made in respect of the patient, and for that purpose, the clinical director concerned shall make such arrangements as may be necessary for—

- (a) facilitating compliance by the patient who is the subject of the proposed order with the conditions of the order,
- (b) the supervision of the patient, and
- (c) providing for the return of the patient to the designated centre under section 13B in the event that he or she is in material breach of his or her conditional discharge order.

(3) Where the Review Board makes a conditional discharge order in respect of a person, the Board shall—

- (a) order that the conditions imposed in the order be communicated to the person by notice in writing at the time of his or her discharge, and
- (b) shall explain or cause to have explained to him or her—
 - (i) the effect of the conditional discharge order and the effect of the conditions imposed in the order,
 - (ii) the fact that the person may, under section 13B, be returned to the designated centre if he or she is in material breach of his or her conditional discharge order,
 - (iii) that the Board may in accordance with this section vary or remove any one or more of the conditions or impose further conditions on the application of either the person concerned or the clinical director of the designated centre concerned, and
 - (iv) that the person may in accordance with this section make an application for an unconditional discharge.

(4) A person who is the subject of a conditional discharge order shall comply with the conditions to which his or her discharge is made subject.

(5) The Review Board shall cause a copy of the conditional discharge order to be sent to the Minister and the clinical director of the designated centre concerned.

(6) At any time after the making of a conditional discharge order, the Board on application to it in that behalf by—

- (a) the person who is the subject of the conditional discharge order, or
- (b) the clinical director of the designated centre concerned,

may vary or remove one or more of the conditions of the conditional discharge order, or impose further conditions if it considers it appropriate to do so, and the provisions of this section shall apply to the varied order as if it had been an order made under subsection (1).

(7) An application under subsection (6) shall be on notice to the person concerned and the clinical director of the designated centre concerned, if the applicant is not the clinical director.

(8) (a) A person who is the subject of a conditional discharge order may make an application in writing to the Review Board for an unconditional discharge (in this Act referred to as an ‘application for an unconditional discharge’).

(b) An application for an unconditional discharge may be made at any time after the expiration of 12 months from the date of the person’s conditional discharge so long as a period of not less than 12 months elapses between an application and the next subsequent application.

(9) (a) Where the Review Board receives an application for an unconditional discharge, it shall request that the person (in this subsection referred to as the ‘applicant’) attend before it so that it may determine whether or not to discharge the applicant unconditionally.

(b) The Review Board having heard—

(i) evidence relating to the applicant (including evidence as to the applicant’s mental condition and his or her compliance with the conditions of his or her conditional discharge order) given by the clinical director or, at the request of the Board, the consultant psychiatrist responsible for the applicant’s treatment and supervision, or by both of them, and

(ii) any evidence adduced by or on behalf of the applicant,

shall, if it thinks proper, make an order for the unconditional discharge of the applicant.

(c) Where the Review Board makes an order for the unconditional discharge of an applicant, the order shall be deemed to be an order for unconditional discharge duly made under section 13.

(d) Where the Review Board does not make an order for unconditional discharge, it shall make such order as it thinks proper for the further conditional discharge of the applicant on the same or different conditions as may

be specified in the order, and the provisions of this section shall apply to such further conditional discharge order as if it had been an order made under subsection (1).

Material breach of conditional discharge order.

13B.—(1) A conditional discharge order shall, in respect of a person who is the subject of the conditional discharge order, be deemed to be revoked if the person is in material breach of that order and accordingly the person shall be deemed to be unlawfully at large.

(2) A person is in material breach of his or her conditional discharge order where the clinical director on reasonable grounds believes that the person is in breach of one or more conditions of his or her conditional discharge, and that—

- (a) there is a serious likelihood of the person causing serious harm to himself or herself or to other persons, or
- (b) the person may be in need of in-patient care or treatment.

(3) Where the clinical director on reasonable grounds believes that a person is in material breach of his or her conditional discharge order, the director shall, unless subsection (4) applies, inform the person in writing of that fact and the reasons for that belief.

(4) Subsection (3) shall not apply where the clinical director on reasonable grounds believes that the material breach is such as to give reasonable grounds for the director to believe that there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons.

(5) The clinical director shall arrange for an officer or servant of the designated centre or an authorised person to effect the person's return to the designated centre and the clinical director may, if necessary, request the Garda Síochána to assist in effecting the return of the person to that centre and the Garda Síochána shall comply with any such request.

(6) Without prejudice to subsection (5) and to any other power conferred by law, a member of the Garda Síochána may arrest without warrant any person whom he or she with reasonable cause suspects to be unlawfully at large pursuant to subsection (1).

(7) A person who is arrested under subsection (6) by a member of the Garda Síochána shall, as soon as practicable, be transferred into the custody of an officer or servant of the designated centre or an authorised person for the purpose of effecting

the return of that person to the designated centre concerned.

(8) A member of the Garda Síochána may for the purposes of this section—

- (a) enter if need be by force any dwelling or other premises where he or she has reasonable cause to believe that the person may be, and
- (b) take all reasonable measures necessary for the return of the person to the designated centre including, where necessary, the detention or restraint of the person.

(9) (a) Notwithstanding the generality of subsection (4), a person who returns or who is returned, as the case may be, to the designated centre concerned pursuant to this section shall as soon as may be upon his or her return be given reasons in writing for his or her return.

(b) The provisions of this Act shall apply to the person as if the person was being committed for the first time to the designated centre pursuant to section 4 or 5 or to section 202 or 203 of the Defence Act 1954 on the date of his or her return to the centre.

(10) Where a person returns or is returned, as the case may be, to a designated centre pursuant to this section—

- (a) the clinical director of that centre shall forthwith notify the Review Board of that return,
- (b) the Board shall order that the patient be brought before it as soon as may be for the purposes of reviewing the patient's detention, and
- (c) the Board may exercise all the powers available to it under section 13 in relation to that patient.

(11) In this section, 'authorised person', in relation to effecting the return of a person under this section, means a person who is for the time being authorised pursuant to section 13C to provide services relating to such a return.

Arrangements
to provide
services.

13C.—(1) The registered proprietor of a designated centre may enter into an arrangement with a person for the purposes of arranging for persons who are members of the staff of that person to provide services relating to effecting the return pursuant to section 13B of persons to that centre.

(2) Where the registered proprietor of a designated centre has entered into an arrangement referred to in subsection (1) with a person, the clinical director of that centre may authorise, in writing and for a period not exceeding 12 months as is specified in the authorisation, such and so many persons who are members of the staff of that person to provide the services referred to in that subsection which are the subject of that arrangement.

(3) In this section—

‘register’ shall be construed in accordance with section 62 of the Mental Health Act 2001;

‘registered proprietor’, in relation to a designated centre, means the person whose name is entered in the register as the person carrying on the centre.”.

9.—Schedule 2 to the Act of 2006 is amended by the substitution of the following entry for the entry specified at reference number 10 in column (1) of that Schedule: Amendment of Schedule 2 to Act of 2006.

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10.	1967, No. 12	Criminal Act 1967	Procedure	Section 4A(1)(c)
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10.—The Defence Act 1954 is amended— Amendment of Defence Act 1954.

- (a) in section 202 (amended by section 50 of the Defence (Amendment) Act 2007) by inserting, in subsection (1)(b), “or 13A” after “section 13”, and
- (b) in section 203 (amended by section 51 of the Defence (Amendment) Act 2007) by inserting, in subsection (2), “or 13A” after “section 13”.

11.—(1) This Act may be cited as the Criminal Law (Insanity) Act 2010. Short title and commencement.

(2) This Act shall come into operation on such day or days as the Minister for Justice and Law Reform may appoint by order or orders either generally or with reference to any particular provision and different days may be so appointed for different purposes and different provisions.