

**Defence of**  
**Mental Health Impairment or**  
**Cognitive Impairment**  
**in**  
*Mental Health and Cognitive Impairment Forensic Provisions Act 2020*  
**The Scheme in Three Flow Charts**

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**Public Defenders Chambers**

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C O N T E N T S

CHART ONE:	Defences and Verdicts in a Criminal Trial
CHART TWO:	Court Orders after ‘Special Verdict’
CHART THREE:	Mental Health Review Tribunal Orders after ‘Special Verdict’

APPLICATION & CURRENCY

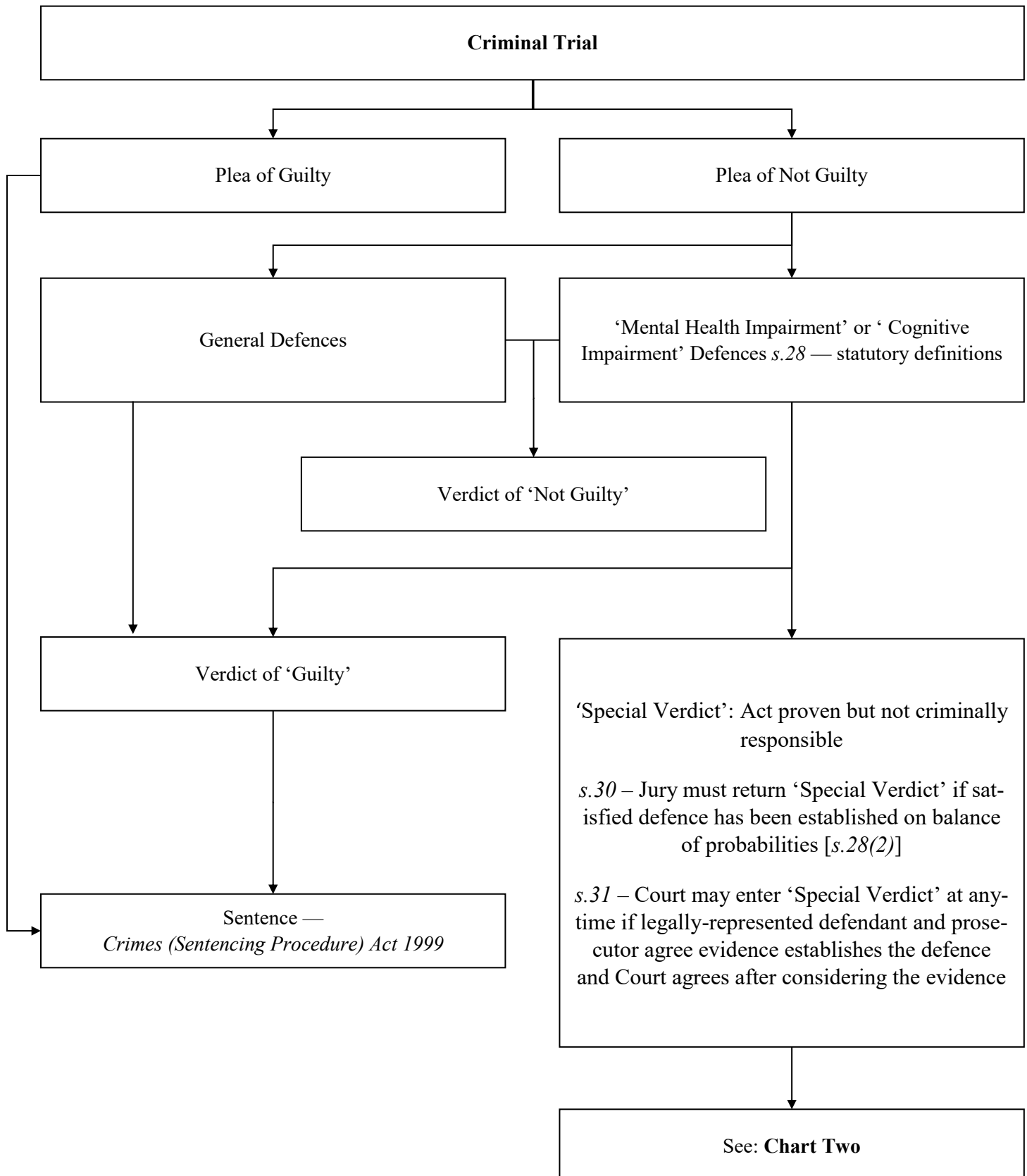
*s.27* – These provisions will apply to criminal proceedings in the Supreme Court  
(including summary jurisdiction) and criminal proceedings in the District Court

Provisions commence 27 March 2021

# Mental Health / Cognitive Impairment Defence: Chart One

## Defences and Verdicts in a Criminal Trial

*Mental Health and Cognitive Impairment Forensic Provisions Act 2020*



# Mental Health / Cognitive Impairment Defence: Chart Two

## Court Orders on 'Special Verdict' of Act Proven but not Criminally Responsible

*Mental Health and Cognitive Impairment Forensic Provisions Act 2020*

### ORDERS OF COURT AFTER 'SPECIAL VERDICT'

*s.33(2)* – Before making any order for release Court may request expert report on condition of defendant and whether release would endanger defendant or public

#### DETENTION

*s.33(1)* – Court may order:

- a) defendant be remanded in custody until further order is made under this section,
- b) defendant be detained in place and manner court thinks fit until released by due process of law

*s.72(1)(c)* – Person becomes a forensic patient

#### RELEASE OR OTHER ORDER

*s.33(1)* – Court may order:

- c) conditional or unconditional release,
- d) any other appropriate order

*s.33(3)* – Court cannot release unless satisfied on balance of probabilities safety of person or member of public not seriously endangered

#### Conditional Release (With Conditions)

*s.72(1)(c)* – Person does become a forensic patient

#### Unconditional Release (Without Conditions)

*s.72(1)(c)* – Person does not become a forensic patient

*s.34* – Court must notify Mental Health Review Tribunal if order not made for unconditional release  
(see also *s.67* referral after special hearing)

# Mental Health / Cognitive Impairment Defence: Chart Three

## Mental Health Review Tribunal Orders

### On Review of Forensic Patient Referred by Trial Court

### After 'Special Verdict' of Act Proven but not Criminally Responsible

*Mental Health and Cognitive Impairment Forensic Provisions Act 2020*

#### MENTAL HEALTH REVIEW TRIBUNAL

*s.78(c)* – Review of Persons Detained or Persons Released with Conditions to be as soon as practicable after finding of 'Special Verdict'.

*s.78(d) (f), (g); s.79* – Review to be at any time; or after six months; or as requested

