

*Status: Point in time view as at 10/05/2016. This version of this chapter contains provisions that are prospective.*  
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## 2016 CHAPTER 18

### **PART 10** CRIMINAL JUSTICE

PROSPECTIVE

#### CHAPTER 2

#### POWERS OF COURT ON CONVICTION

##### *Public protection orders with and without restrictions*

##### **Public protection orders with and without restrictions**

**167.**—(1) This section applies where—

- (a) a person is convicted before the Crown Court of an offence punishable with imprisonment, other than an offence for which the sentence is fixed by law; or
- (b) a person is convicted by a court of summary jurisdiction of an offence punishable on summary conviction with imprisonment.

(2) The court may—

- (a) if the detention conditions are met, make a public protection order without restrictions;
- (b) if the detention conditions and the restriction condition are met, make a public protection order with restrictions.

For the meaning of “the detention conditions” and “the restriction condition” see sections 168 and 169.

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(3) In this Part (except paragraph (b)) “public protection order without restrictions” means an order which—

- (a) requires that the offender be admitted to and detained in an appropriate establishment which is specified in the order; and
- (b) provides that the order is to be treated as a public protection order without restrictions.

(4) In this Part (except paragraph (b)) “public protection order with restrictions” means an order which—

- (a) requires that the offender be admitted to and detained in an appropriate establishment which is specified in the order; and
- (b) either—
  - (i) provides (with no time limit) that the order is to be treated as a public protection order with restrictions; or
  - (ii) provides that for a specified period the order is to be treated as a public protection order with restrictions.

(5) For the effect of public protection orders without restrictions and public protection orders with restrictions see—

- (a) section 171 (effect of public protection orders with and without restrictions);
- (b) Chapter 3 (detention under public protection orders without restrictions); and
- (c) Chapter 4 (detention under public protection orders with restrictions: restrictions on discharge etc).

(6) In this Part “appropriate establishment” means—

- (a) a hospital; or
- (b) a care home—
  - (i) in which care is provided for people who have an impairment of, or a disturbance in the functioning of, the mind or brain; and
  - (ii) which is designated by the Department of Justice for the purposes of this paragraph.

(7) In this Part “public protection order” (without more) means a public protection order without restrictions or a public protection order with restrictions.

### **Section 167: the detention conditions**

**168.**—(1) For the purposes of section 167 “the detention conditions” are—

- (a) that the court is satisfied, on the required medical evidence, of the matters mentioned in subsection (2);

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- (b) that, having regard to all the circumstances and in particular to the matters mentioned in subsection (3), the court considers that making an order for the offender to be detained in an appropriate establishment is the most suitable way of dealing with the case; and
  - (c) that the court is satisfied, on the written or oral evidence of a person representing the managing authority of the appropriate establishment specified in the order (“the establishment”), that arrangements have been made for the offender's detention there in pursuance of the order.
- (2) The matters referred to in subsection (1)(a) are—
- (a) that there is an impairment of, or a disturbance in the functioning of, the offender's mind or brain;
  - (b) that appropriate care or treatment is available for the offender in the establishment;
  - (c) that dealing with the offender in any way not involving his or her detention would create a risk, linked to the impairment or disturbance, of serious physical or psychological harm to other persons; and
  - (d) that detaining the offender in the establishment in circumstances amounting to a deprivation of liberty would be a proportionate response to—
    - (i) the likelihood of the harm concerned; and
    - (ii) the seriousness of that harm.
- (3) The matters referred to in subsection (1)(b) are—
- (a) the other available ways of dealing with the offender;
  - (b) the nature of the offence;
  - (c) the past history of the offender;
  - (d) the risk of physical or psychological harm to other persons if the offender were set at large.
- (4) In considering for any purpose of this section whether it would be appropriate to deal with the offender in a way not involving detention, or what risk would be created by dealing with the offender in that way, the court—
- (a) must in particular consider whether if it dealt with the offender in that way it could also make a sexual offences prevention order or violent offences prevention order in respect of the offender; and
  - (b) if it could make such an order, must take into account that fact and the effect of such an order.
- (5) In this section “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.
- (6) In this section—

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“sexual offences prevention order” means an order under section 106 of the Sexual Offences Act 2003;

“violent offences prevention order” has the same meaning as in Part 8 of the Justice Act (Northern Ireland) 2015 (see section 76(1)).

### **Section 167: the restriction condition**

**169.**—(1) For the purposes of section 167 “the restriction condition” is that the court, having regard to all the circumstances and in particular to the matters mentioned in subsection (2), considers that making a public protection order with restrictions (rather than a public protection order without restrictions) is necessary for the protection of the public from serious physical or psychological harm.

(2) The matters are—

- (a) the nature of the offence;
- (b) the past history of the offender;
- (c) the risk of physical or psychological harm to other persons if the offender were set at large.

### **Further provision about making of public protection orders**

**170.**—(1) Nothing in a provision mentioned in subsection (2) prevents a court from making a public protection order in respect of an offence the sentence for which would otherwise fall to be imposed under that provision.

(2) The provisions referred to in subsection (1) are—

- (a) Article 70(2) of the Firearms (Northern Ireland) Order 2004;
- (b) paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006;
- (c) Article 13 or 14 of the Criminal Justice (Northern Ireland) Order 2008;
- (d) section 7 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

(3) Any reference in this section to a sentence falling to be imposed under a provision mentioned in subsection (2) is to be read in accordance with Article 4(2) of the Criminal Justice (Northern Ireland) Order 2008.

(4) Where a public protection order is made in respect of an offence, the court—

- (a) may not pass a custodial sentence or impose a fine or make a probation order in respect of the offence; but
- (b) may make any other order which the court has power to make.

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### **Effect of public protection orders**

**171.—**(1) Where a court makes a public protection order in respect of a person—

- (a) a constable or any other person directed to do so by the court must take the person to the establishment specified in the order;
  - (b) the managing authority of that establishment must—
    - (i) admit the person; and
    - (ii) detain him or her in accordance with the relevant provisions; and
  - (c) any question whether the person may be given any treatment while detained in pursuance of the order is (subject to section 243) to be determined in the same way as if the person were not so detained.
- (2) In this section “the relevant provisions” means—
- (a) in relation to a public protection order without restrictions, Chapter 3;
  - (b) in relation to a public protection order with restrictions, Chapter 4 (but see sections 172 and 173).

### **Power to direct the ending of restrictions under a public protection order**

**172.—**(1) This section applies if—

- (a) a public protection order with restrictions is in force in respect of a person; and
- (b) the Department of Justice is satisfied that it is no longer necessary for the protection of the public from serious physical or psychological harm that the person be subject to a public protection order with restrictions.

(2) The Department of Justice may direct that, with effect from a date specified in the direction, the public protection order is to have effect as a public protection order without restrictions (see further section 173).

### **Effect of ending of restrictions under a public protection order**

**173.—**(1) This section applies where a court has made a public protection order with restrictions in respect of a person and—

- (a) a direction is made under section 172 (ending of restrictions) in respect of the order; or
- (b) the order provides that for a specified period the order is to be treated as a public protection order with restrictions, and that period ends at a time when the order is still in force and when no direction has been made under section 172.

(2) From the end of the restricted period—

- (a) Chapter 4 ceases to apply;

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- (b) the order has effect as if it were a public protection order without restrictions requiring the person to be detained in the establishment concerned; and
- (c) Chapter 3 applies in relation to the person as if the order had been made (as a public protection order without restrictions) on the last day of the restricted period and as if the person had then been admitted to the establishment concerned in pursuance of the order.

(3) If when the restricted period ends the person is absent with permission given under section 195, the permission, and any accompanying direction under section 195(4), have effect from the end of the restricted period as if given under section 187.

(4) In this section—

“the establishment concerned” means the establishment in which, immediately before the end of the restricted period, the person was liable to be detained under the public protection order with restrictions;

“the restricted period” means—

- (a) where subsection (1)(a) applies, the period beginning with the actual making of the public protection order and ending immediately before the date specified in the direction under section 172;
- (b) where subsection (1)(b) applies, the period that was specified in the order as the period for which the order should be treated as a public protection order with restrictions.

### *Hospital directions*

#### **Hospital direction when passing custodial sentence**

**174.**—(1) This section applies where—

- (a) a person is convicted before the Crown Court of an offence punishable with imprisonment, other than an offence for which the sentence is fixed by law; or
- (b) a person is convicted by a court of summary jurisdiction of an offence punishable on summary conviction with imprisonment.

(2) If—

- (a) the court, having considered the other available ways of dealing with the offender, decides to impose a custodial sentence (as defined by section 253) in respect of the offence, and
- (b) the conditions in section 175 are met,

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the court may when it passes the custodial sentence direct that, instead of being removed to and detained in a prison, the offender is to be removed to and detained in a hospital specified in the direction.

(3) A direction under this section given in relation to an offender has effect not only as regards the custodial sentence mentioned in subsection (2) but also (so far as applicable) as regards any other custodial sentence imposed on the same or a previous occasion.

(4) Where the custodial sentence imposed by the court is not a sentence of imprisonment, any reference in this section to a “prison” is to a place in which the person would be liable to be detained under the sentence but for the direction under this section.

(5) In this Part a “hospital direction” means a direction under this section.

### **Conditions for giving hospital direction**

**175.—**(1) The conditions referred to in section 174(2) are—

- (a) that the court is satisfied, on the required medical evidence, of the matters mentioned in subsection (2);
- (b) that, having regard to all the circumstances and in particular to the matters mentioned in subsection (3), the court considers that giving a hospital direction is appropriate; and
- (c) that the court is satisfied on the written or oral evidence of a person representing the managing authority of the hospital specified in the direction (“the hospital”) that arrangements have been made for the offender's detention in the hospital in pursuance of the direction.

(2) The matters referred to in subsection (1)(a) are—

- (a) that the offender has a disorder requiring treatment;
- (b) that failure to provide treatment to the offender as an in-patient in a hospital would be more likely than not to result in serious physical or psychological harm to the offender or serious physical harm to other persons; and
- (c) that treatment appropriate to the offender's case is available for the offender in the hospital.

(3) The matters referred to in subsection (1)(b) are—

- (a) the effect of section 198 (transfer from hospital to prison);
- (b) the ways in which the offender might become an in-patient in a hospital if the court passed a custodial sentence without giving a hospital direction; and
- (c) how likely it is that, if a hospital direction is given and the offender is detained in hospital under the direction—



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- (i) consent to treatment will be given by the offender, or by a person with authority to give consent on behalf of the offender; or
- (ii) treatment will be capable of being given to the offender by virtue of Part 2 of this Act (or, if the offender is under 16, under the Mental Health Order).

(4) In subsection (1)(a) “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of—

- (a) if the disorder is mental disorder, an approved medical practitioner;
- (b) otherwise, a medical practitioner who appears to the court to have special experience in the diagnosis or treatment of the disorder.

### **Effect of hospital directions**

**176** Where a court gives a hospital direction in respect of a person—

- (a) a constable or any other person directed to do so by the court must take the person to the hospital specified in the direction;
- (b) the managing authority of that hospital must—
  - (i) admit the person; and
  - (ii) detain him or her in accordance with Chapter 5; and
- (c) any question whether the person may be given any treatment while detained in a hospital in pursuance of the direction is (subject to section 243) to be determined in the same way as if the person were not so detained.

### *Interim detention orders*

### **Interim detention orders**

**177.**—(1) This section applies where—

- (a) a person is convicted before the Crown Court of an offence punishable with imprisonment, other than an offence for which the sentence is fixed by law; or
  - (b) a person is convicted by a court of summary jurisdiction of an offence punishable on summary conviction with imprisonment.
- (2) If the conditions in subsection (3) are met the court may, before—
- (a) making a public protection order,
  - (b) passing a custodial sentence with a hospital direction, or
  - (c) dealing with the offender in some other way,



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make an order which requires that the offender be admitted to a hospital specified in the order and detained there in accordance with section 178.

- (3) The conditions are—
- (a) that the court is satisfied on the required medical evidence—
    - (i) that there is an impairment of, or disturbance in the functioning of, the offender's mind or brain; and
    - (ii) that appropriate care or treatment is available for the offender in the hospital;
  - (b) that there is reason to suppose that the most suitable way of dealing with the case may be—
    - (i) to make a public protection order; or
    - (ii) to pass a custodial sentence and give a hospital direction;
  - (c) that the court is satisfied on the written or oral evidence of a person representing the managing authority of the hospital that arrangements have been made for the offender's detention in the hospital in pursuance of the order.
- (4) The court may regard the condition in subsection (3)(b) as met only if—
- (a) it considers that a custodial sentence is not, or may not be, appropriate but is satisfied on the required medical evidence that there is reason to suppose that the conditions in section 168(2)(c) and (d) may be met; or
  - (b) it considers that a custodial sentence is appropriate and is satisfied on the required medical evidence that there is reason to suppose that the condition in section 175(2)(b) may be met.
- (5) In this section “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.
- (6) In this Part “interim detention order” means an order under this section.

#### **Effect of interim detention orders**

- 178.**—(1) Where a court makes an interim detention order in respect of a person—
- (a) a constable or any other person directed to do so by the court must take the person to the hospital specified in the order;
  - (b) the managing authority of the hospital must—
    - (i) admit the person; and
    - (ii) detain him or her in accordance with this section; and

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- (c) any question whether the person may be given any treatment while detained in pursuance of the order is (subject to section 243) to be determined in the same way as if the person were not so detained.
- (2) An interim detention order—
  - (a) has effect for such period, not exceeding 12 weeks, as the court may specify when making the order; but
  - (b) subject to subsection (3), may be renewed for further periods of not more than 28 days at a time if it appears to the court on the written or oral evidence of the responsible medical practitioner that the continuation of the order is justified.
- (3) An interim detention order may not continue in force for more than 6 months in total.
- (4) Where an interim detention order has been made, the court must terminate the order if it—
  - (a) makes a public protection order in respect of the offender;
  - (b) passes a custodial sentence and gives a hospital direction in respect of the offender; or
  - (c) decides, after considering the written or oral evidence of the responsible medical practitioner, to pass a custodial sentence without a hospital direction or to deal with the offender in some other way.
- (5) The power of renewing an interim detention order may be exercised without the offender's being brought before the court if the offender is represented by counsel, or a solicitor, who is given an opportunity of being heard.
- (6) In the case of an offender who is subject to an interim detention order, the court may make a public protection order without the offender's being brought before the court if the offender is represented by counsel, or a solicitor, who is given an opportunity of being heard.
- (7) If an offender absconds from a hospital in which he or she is liable to be detained under an interim detention order, or while being taken to or from such a hospital—
  - (a) the offender may be arrested without warrant by any constable;
  - (b) after being arrested, the offender must be brought as soon as practicable before the court that made the order; and
  - (c) on the offender's being brought before it, the court may terminate the interim detention order and deal with the offender in any way in which it could have done if no such order had been made.

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