



# Crime (Sentences) Act 1997

## 1997 CHAPTER 43

### PART III

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Mentally disordered offenders*

#### **46 Power to make hospital and limitation directions**

After section 45 of the 1983 Act there shall be inserted the following sections—

##### *“Hospital and limitation directions*

#### **45A Power of higher courts to direct hospital admission**

- (1) This section applies where, in the case of a person convicted before the Crown Court of an offence the sentence for which is not fixed by law—
  - (a) the conditions mentioned in subsection (2) below are fulfilled; and
  - (b) except where the offence is one the sentence for which falls to be imposed under section 2 of the Crime (Sentences) Act 1997, the court considers making a hospital order in respect of him before deciding to impose a sentence of imprisonment (“the relevant sentence”) in respect of the offence.
- (2) The conditions referred to in subsection (1) above are that the court is satisfied, on the written or oral evidence of two registered medical practitioners—
  - (a) that the offender is suffering from psychopathic disorder;
  - (b) that the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and
  - (c) that such treatment is likely to alleviate or prevent a deterioration of his condition.

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*Status: This is the original version (as it was originally enacted).*

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- (3) The court may give both of the following directions, namely—
- (a) a direction that, instead of being removed to and detained in a prison, the offender be removed to and detained in such hospital as may be specified in the direction (in this Act referred to as a “hospital direction”); and
  - (b) a direction that the offender be subject to the special restrictions set out in section 41 above (in this Act referred to as a “limitation direction”).
- (4) A hospital direction and a limitation direction shall not be given in relation to an offender unless at least one of the medical practitioners whose evidence is taken into account by the court under subsection (2) above has given evidence orally before the court.
- (5) A hospital direction and a limitation direction shall not be given in relation to an offender unless the court is satisfied on the written or oral evidence of the registered medical practitioner who would be in charge of his treatment, or of some other person representing the managers of the hospital that arrangements have been made—
- (a) for his admission to that hospital; and
  - (b) for his admission to it within the period of 28 days beginning with the day of the giving of such directions;
- and the court may, pending his admission within that period, give such directions as it thinks fit for his conveyance to and detention in a place of safety.
- (6) If within the said period of 28 days it appears to the Secretary of State that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the hospital direction, he may give instructions for the admission of the patient to such other hospital as appears to be appropriate instead of the hospital so specified.
- (7) Where such instructions are given—
- (a) the Secretary of State shall cause the person having the custody of the patient to be informed, and
  - (b) the hospital direction shall have effect as if the hospital specified in the instructions were substituted for the hospital specified in the hospital direction.
- (8) Section 38(1) and (5) and section 39 above shall have effect as if any reference to the making of a hospital order included a reference to the giving of a hospital direction and a limitation direction.
- (9) A hospital direction and a limitation direction given in relation to an offender shall have effect not only as regards the relevant sentence but also (so far as applicable) as regards any other sentence of imprisonment imposed on the same or a previous occasion.
- (10) The Secretary of State may by order provide that this section shall have effect as if the reference in subsection (2) above to psychopathic disorder included a reference to a mental disorder of such other description as may be specified in the order.
- (11) An order made under this section may—

- (a) apply generally, or in relation to such classes of offenders or offences as may be specified in the order;
- (b) provide that any reference in this section to a sentence of imprisonment, or to a prison, shall include a reference to a custodial sentence, or to an institution, of such description as may be so specified; and
- (c) include such supplementary, incidental or consequential provisions as appear to the Secretary of State to be necessary or expedient.

#### **45B Effect of hospital and limitation directions**

- (1) A hospital direction and a limitation direction shall be sufficient authority—
  - (a) for a constable or any other person directed to do so by the court to convey the patient to the hospital specified in the hospital direction within a period of 28 days; and
  - (b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act.
- (2) With respect to any person—
  - (a) a hospital direction shall have effect as a transfer direction; and
  - (b) a limitation direction shall have effect as a restriction direction.
- (3) While a person is subject to a hospital direction and a limitation direction the responsible medical officer shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report shall contain such particulars as the Secretary of State may require.”

#### **47 Power to specify hospital units**

- (1) Subject to subsection (2) below, any power to specify a hospital which is conferred by—
  - (a) section 37 of the 1983 Act (hospital orders);
  - (b) section 45A of that Act (hospital and limitation directions);
  - (c) section 47 of that Act (transfer directions); or
  - (d) paragraph 1 of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (orders for admission to hospital),includes power to specify a hospital unit; and where such a unit is specified in relation to any person in the exercise of such a power, any reference in any enactment (including one contained in this Act) to him being, or being liable to be, detained in a hospital shall be construed accordingly.
- (2) In subsection (1) above—
  - (a) paragraph (a) shall not apply unless the court also makes an order under section 41 of the 1983 Act (restriction orders);
  - (b) paragraph (c) shall not apply unless the Secretary of State also gives a direction under section 49 of that Act (restriction directions); and
  - (c) paragraph (d) shall not apply unless the court has given a direction under paragraph 2(1)(b) of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991.

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(3) In this section—

“hospital”, in relation to any exercise of a power, has the same meaning as in the enactment which confers the power;

“hospital unit” means any part of a hospital which is treated as a separate unit.

(4) In this section—

(a) the reference to paragraph 1 of Schedule 1 to the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 includes a reference to subsection (1) of section 116B of the Army Act 1955 and the Air Force Act 1955 and section 63B of the Naval Discipline Act 1957; and

(b) the reference to paragraph 2(1)(b) of that Schedule includes a reference to subsection (2) of those sections.

#### **48 Offenders conditionally discharged from hospital**

(1) The 1983 Act and the 1984 Act shall have effect subject to the amendments specified in Schedule 3 to this Act, being amendments making provision with respect to transfers within the British Islands of responsibility for offenders conditionally discharged from hospital.

(2) In this section and that Schedule “the 1984 Act” means the Mental Health (Scotland) Act 1984.

#### **49 Other amendments of the 1983 Act**

(1) In subsection (5) of section 38 of the 1983 Act (interim hospital orders), for the words “six months” there shall be substituted the words “twelve months”.

(2) In subsection (3) of section 41 of that Act (power of higher courts to restrict discharge from hospital), in paragraph (c)(ii), after the words “section 19 above” there shall be inserted the words “or in pursuance of subsection (3) of that section”.

(3) In subsection (1) of section 47 of that Act (removal to hospital of persons serving sentences of imprisonment etc.), the words “(not being a mental nursing home)” shall cease to have effect.

(4) In paragraph 5 of Part II of Schedule 1 to that Act (patients subject to hospital and guardianship orders)—

(a) the word “and” immediately following sub-paragraph (a) shall cease to have effect; and

(b) after sub-paragraph (b) there shall be inserted the words “and

(c) in subsection (3) after the words “may at any time” there shall be inserted the words “, with the consent of the Secretary of State,.”