

Number 1

The Crime (Sentences) Act 1997

The Crime (Sentences) Act 1997 introduces a number of new measures concerning sentencing powers in respect of persistent offenders. The legislation introduces a new power for the Courts to attach a “Hospital Direction” to a prison sentence. This allows the offender to be treated in hospital as long as the Responsible Medical Officer is satisfied that he is benefiting from treatment; if the medical evidence suggests that the offender can obtain no further benefit from treatment he may be transferred back to prison by warrant of the Home Secretary.

The Act also makes some important amendments to the Mental Health Act 1983 (“the MHA 1983”).

The 1997 Act requires Courts to impose a sentence of life imprisonment on a person who is convicted of a “serious offence” (including attempted murder, manslaughter and rape and attempted rape) for the second time unless there are exceptional circumstances relating to the offences or to the offender which justify a lesser sentence being imposed. The fact that the offender suffers from a mental disorder does not in itself constitute “exceptional circumstances”.

A Hospital Order cannot be made as an alternative to a life sentence although the Court may impose a Hospital Direction under Section 45A of the MHA 1983 (inserted by Section 46 of the 1997 Act).

Under Section 45A of the MHA 1983 the Crown Court can, in certain circumstances, attach a Hospital Direction to a prison sentence. When imposing a prison sentence which is not fixed by law (for example murder) the Crown Court may direct that the offender be immediately admitted to a hospital provided that the Court is satisfied on the written or oral evidence of two doctors that:

- (a) The offender is suffering from a psychopathic disorder.
- (b) The mental disorder is of a nature or degree which makes it appropriate for the offender to be detained in a hospital for medical treatment; and
- (c) Such treatment is likely to alleviate or prevent a deterioration of the offender’s condition.

The following points should be noted:

1. All these criteria need to be satisfied for the Court to have the power to direct that the offender be admitted to hospital.
2. At least one of the doctors must give evidence orally before the Court.

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3. The Court must be satisfied that arrangements have been made for the offender's admission to a specified hospital so that he/she can be admitted to that hospital within 28 days of the hospital direction.
4. The offender must be admitted to a named hospital within 28 days of the Hospital Direction and will be treated as if admitted under a transfer direction with a restriction order.
5. Where the Crown Court considers that a Hospital Direction may be appropriate but the medical evidence is inconclusive, the Court may make an interim hospital order under Section 38 of the MHA 1983. The 1997 Act extends the maximum duration of an interim hospital order from 6 to 12 months.

Before making a Hospital Direction (unless the offence requires the Court to impose a life sentence) the Crown Court must first consider making a Hospital Order under Section 37 of the MHA 1983 (with or without a restriction order). If the Court makes a Hospital Direction a limitation direction must also be made which has the same effect as a restriction order under Section 49 of the MHA 1983.

The Hospital Direction is intended to give the Courts greater flexibility in dealing with cases where they conclude that a prison sentence is appropriate despite the offender being mentally disordered. The reasons for this will be that the offence attracts the automatic life sentence or because the Court is satisfied that a prison sentence with a Hospital Direction is the most effective way to protect the public from harm. The difference with a Hospital Order under Section 38 is that when making such an order the Court must be satisfied that it is inappropriate to impose a prison sentence, in the light of the medical evidence. In considering whether to impose a prison sentence the Court must first satisfy itself that it would not be appropriate to make a Hospital Order.

Note The Home Secretary has powers to admit a person to a specified hospital unit and therefore the Home Secretary's consent will be required before that person can be transferred from the specified unit. The 1997 Act also amends the MHA 1983 so that the Home Secretary's consent is required for transfers of restricted patients between hospitals even if the hospitals are managed by the same NHS Trust or authority.

The 1997 Act also amends the MHA 1983 to allow the transfer of prisoners to mental nursing homes, which was previously prohibited under Section 47 of the 1983 Act.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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