

## POWERS OF COURTS – MENTALLY ILL OFFENDERS

The sentencing powers of courts over mentally ill offenders are contained in the Mental Health Act 1983.

### 1. HOSPITAL ORDER

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- By s37, a person convicted of an imprisonable offence may be given a hospital order, which authorises his admission to and detention in a specified hospital.
- The court must be satisfied on medical evidence that he is suffering from one of the four mental disorders defined in Part I of the MHA (mental illness, mental impairment, severe mental impairment, or psychopathic disorder); and the mental disorder makes it appropriate for him to be detained for treatment.
- The court must also be of the view that a hospital order is the most suitable disposal.
- A hospital order lapses after six months, but may be renewed for a further six months and then annually.
- A patient detained on a court order without restrictions may be discharged from detention by the responsible medical officer, by the hospital managers, or on the direction of a Mental Health Review Tribunal.

### 2. RESTRICTION ORDER

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- High risk patients who are admitted to hospital on a court order or on transfer from prison may also be subject to a restriction order. This substantially restricts the circumstances under which a patient may be discharged from detention.
- The Crown Court may impose a restriction order under s41 where it appears to the court: “having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm so to do.”
- The order cannot be made without evidence of risk of serious harm.
- The order can be made for a limited period, but far more commonly will be indefinite. During this period, neither the responsible medical officer nor the hospital managers may discharge the offender without the consent of the Secretary of State.
- The Secretary of State or a Mental Health Review Tribunal may discharge a patient who is subject to a restriction order at any time, absolutely or conditionally. If the patient is discharged conditionally, the restriction order remains in force, permitting future recall to hospital.
- In *R v Birch* (1989) 1 Cr App R (S) 202, Mustill LJ held that the decision whether to impose a restriction order was for the judge not

the medical experts. The court was required to assess not the seriousness of the risk that the offender will re-offend but the risk that if he does so the public will suffer serious harm.

### **3. HOSPITAL AND LIMITATION DIRECTION**

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- This disposal in s45A and B of the MHA 1983 was inserted by the Crime (Sentences) Act 1997, s46.
- The order is designed to apply where the court has heard evidence that the offender is suffering from a treatable psychopathic disorder, but the court wishes to ensure the offender will, if he does not respond to treatment, be transferred to prison to complete his sentence rather than discharged from hospital.