



## 2016 CHAPTER 18

### PART 10

#### CRIMINAL JUSTICE

##### CHAPTER 2

##### POWERS OF COURT ON CONVICTION

PROSPECTIVE

#### *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,

*Status: This version of this cross heading contains provisions that are prospective.*

*Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Hospital directions is up to date with all changes known to be in force on or before 23 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 285(2)(a)-(c) substituted for s. 285(2)(a)(b) by [2022 c. 18 \(N.I.\) Sch. 3 para. 77\(b\)](#)