

Comparison of sentencing disposals under the Mental Health Act 1983 for the most serious offences

Disposal	Hybrid order (s 45A) with determinate sentence	Hybrid order (s 45A) with indeterminate sentence	Hospital order with a restriction (s 37/41)
Powers of release or discharge	<p>If suitable for discharge from hospital before end of term, D returned to prison, then subject to release on licence</p> <p>After end of prison term, the order becomes the equivalent of a notional unrestricted s 37 order; Responsible Clinician (RC) usually authorises D's discharge; D can also apply to the First Tier Tribunal (Mental Health)</p>	<p>If suitable for discharge from hospital before end of term, D returned to prison, then subject to release by Parole Board, who must consider D's risk generally</p> <p>If still in hospital after end of prison term, FTT can authorise D's release; in practice, Secretary of State for Justice (SoS) refers D to Parole Board.</p> <p>Parole Board assesses risk in the normal way</p>	<p>Discharge authorised by the FTT or via application to SoS (rare)</p> <p>SoS can object to discharge and make representations to the FTT</p> <p>Discharge depends on D no longer being a risk. FTT focuses primarily on risk arising from D's medical condition</p>
Regime after release or discharge	<p>D is released on licence for the remainder of his determinate sentence. Probation can request a term of the licence requiring D to co-operate fully with treatment</p> <p>If on a notional s 37 order, RC can place D on a s 17A Community Treatment Order (CTO) on discharge</p>	<p>D is released on licence.</p> <p>Probation can request a term of the licence requiring D to co-operate fully with treatment</p> <p>If D is discharged by FTT prior to Parole Board Hearing, no CTO is possible</p>	<p>FTT can make discharge a) absolute or b) conditional. The test in s 73 for making discharge conditional is whether it would be appropriate for D to be liable to recall to hospital</p> <p>D can later be discharged from conditions according to criteria focusing on risk</p>
Powers if D breaches post-release conditions	<p>D's Offender Manager can decide to apply for a recall through the Prison Service; the police will be required to enforce a recall</p> <p>If on CTO, power of recall can be used when mental health deteriorates</p>	<p>D's Offender Manager can decide to apply for a recall through the Prison Service; the police will be required to enforce a recall</p> <p>If on CTO, power of recall can be used when mental health deteriorates</p>	<p>SoS can order under s 42(6) that D be taken in custody back to hospital if it is desirable in the interests of justice. Can be used to cut through bureaucracy and achieve a faster recall.</p>