

Section 47 of the Mental Health Act

Act

Transfer of a sentenced prisoner to hospital

This factsheet looks at when you might be transferred from prison to hospital under section 47 of the Mental Health Act 1983. It explains how and when this section is used. It also explains what your rights are on this section and what could happen afterwards. This factsheet is for sentenced prisoners who experience mental health issues. And their carers, relatives and friends.

Key Points.

- The Mental Health Act is the law that says when you can be detained in hospital if you have a mental disorder.
- Section 47 of the Mental Health Act allows mental health professionals to transfer you from prison to hospital for treatment.
- To be transferred from prison to hospital, you must have a mental disorder and be so unwell that you need treatment in hospital.
- The prison will ask the Ministry for Justice for permission to transfer you to hospital.
- The Ministry for Justice might add a restriction direction to section 47. A restriction direction is known as a 'section 49'. When this happens, the section is called a section 47/49. This means that the Ministry of Justice have to approve leave and your discharge from hospital.
- You can be treated without your permission.
- You could go back to prison if your mental health gets better.
- If you are still in hospital when your sentence ends, the hospital can discharge you. If you need to stay in hospital, they will move you to a different section, called a 'notional' section 37.
- If you don't agree with being detained in hospital, you can appeal to a First-tier Tribunal (FTT) and to the hospital managers. But, for you to be discharged, the Ministry for Justice has to agree with their decision.
- When you are discharged, you are entitled to free aftercare services under section 117 of the Mental Health Act.

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What professionals might be involved if you're transferred from prison to hospital?

There are different professionals that might be involved in your care while you are in hospital under the Mental Health Act. The professionals mentioned in this factsheet are below.

Approved clinician (AC): an AC is a mental health professional who is allowed to use the Mental Health Act. A doctor, psychologist, nurse, occupational therapist, or social worker can be an AC. They are trained to assess and treat your mental health and they are involved in your care planning.

Responsible clinician (RC): your RC is the approved clinician who is responsible for your care and treatment. They can decide if you are well enough to leave hospital and they can renew your section. Your RC is usually a psychiatrist.

Second opinion appointed doctor (SOAD): a SOAD is an independent doctor who can make decisions about your treatment under the Mental Health Act. Your RC might want to give you treatment against your will after your first 3 months in hospital. They will need the agreement of a SOAD.

The Ministry of Justice: The Ministry of Justice (MoJ) undertakes the Secretary of State for Justice's responsibilities under the Mental Health Act. If you have a section 49 restriction on you, the MoJ decides things like whether you can move from prison to hospital, or from hospital to prison. Your RC needs to get permission from the MoJ before they let you leave hospital.

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1. When can I be transferred from prison to hospital because of mental illness?

Under section 47 of the Mental Health Act, prison staff can transfer you from prison to hospital if: ¹

- you are a sentenced prisoner, and
- you have a mental disorder and your mental health needs treatment in hospital.

Being a 'sentenced' prisoner means that you are in prison because you have been found guilty of a crime. This is different to being in prison because you are waiting to have a court hearing.

A mental disorder can include mental illness and things like dementia, and developmental disorders including autism.

What is a section 49 restriction direction? ²

The Ministry of Justice can add a restriction direction added to your section 47 order. The restriction is known as a 'section 49'. This makes it a section 47/49. This means that the Ministry of Justice have to approve leave, your discharge from hospital and your transfer back to prison.

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2. How do prisons use section 47 of the Mental Health Act?

If the prison healthcare team are concerned about your mental health they can arrange for 2 doctors to assess you.³ They can do this if they think you're that unwell you need to be in hospital. The doctors might not assess you at the same time.⁴

In their assessment, the doctors will look at 3 things:⁵

- whether you have a mental disorder,
- whether you are so unwell that you need to be detained in hospital for treatment, and
- whether treatment is available.

If the doctors feel these 3 things apply, they'll ask the Ministry of Justice for permission to move you to hospital.

If the Ministry of Justice gives permission for you to be moved to hospital, they'll write a document called a 'transfer direction'.

Once the Secretary of State has written the transfer direction, a hospital bed should be found for you within 14 days.⁶

If a bed isn't found within 14 days, the transfer direction expires. If this happens, the prison healthcare team will have to start the process all over again.⁷

You might need to wait in prison for a bed to be found. Some prisons have healthcare units where you could stay.

You can find more information about '**Healthcare in prison**' at www.rethink.org. Or call our General Enquiries team on 0121 522 7007, and ask them to send you a copy of our factsheet.

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3. How long will I be in hospital?

You can be discharged from hospital, and transferred back to prison, at any time. This could happen if your responsible clinician (RC) feels that your mental health has improved, and the prison is able to manage it.

The Ministry for Justice would need to give their permission for you to be transferred back to prison.⁸

If your sentence has a fixed end date, and you have a section 49 restriction, it runs out when your sentence ends.⁹ But you may have to stay in hospital for treatment if your RC thinks you need to.

In this case, your section becomes a 'notional' section 37.¹⁰ 'Notional' means you will be treated as though you are in hospital under a section 37 hospital order.¹¹

If you don't know what kind of sentence you are under, you can ask your RC.

Can I apply for parole?

If your sentence lets you apply for parole, you could do this while you are in hospital. But only if a First-tier Tribunal (FTT) has said you don't need to be in hospital anymore.¹²

There is more information about FTTs in [section 5](#) of this factsheet.

Getting parole means that you can leave prison before the end of your sentence. You will be supervised after you are released on parole. This is known as being on licence, or on probation. You will have to stick to certain conditions.

You can read more about parole here: www.gov.uk/getting-parole

What is a community treatment order?

You might leave hospital on a community treatment order (CTO).

This can only happen if the Ministry of Justice have applied a section 49 restriction direction to you.¹³

You can be put on a CTO if:

- your RC thinks that you need to stay under the Mental Health Act, but
- you can be treated safely in the community.

A CTO means that you have to stick to certain conditions to stay out of hospital. For example, you have to agree to keep taking your medication.

You can find more information about:

- Community treatment orders (CTOs)
- Prison - Planning for release
- Section 37 of the Mental Health Act

at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

You can find more information about **‘Going into hospital - Money matters’** at: www.rethink.org/advice-and-information/living-with-mental-illness/money-benefits-and-mental-health/

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4. What are my rights in hospital?

What is an independent mental health advocate (IMHA)?

You can get support from an independent mental health advocate (IMHA).¹⁴

An IMHA can help you understand: ¹⁵

- your rights under the Mental Health Act, including your right to appeal your detention,
- the rights that other people have, such as your family,
- any conditions or restrictions which affect you, or
- any medical treatment you are receiving and the reasons for that treatment.

With your agreement an IMHA can do the following.

- Meet with you in private.
- Look at your health records.
- Speak to the people treating you.
- Represent you. They can speak or write for you.
- Go with you to meetings about your treatment and care.

Hospital staff must tell you about the IMHA service, and how to contact it.¹⁶

You can find more information about 'Advocacy' at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

Can I appeal my detention in hospital?

You have the right to appeal to a First-tier Tribunal (FTT). This is an independent panel that can discharge you from the Mental Health Act.¹⁷

You can appeal:¹⁸

- once during your first 6 months in hospital,
- once again during the next 6 months, and
- then once every year after that.

You also have the right to appeal to the hospital managers.¹⁹ The hospital managers are the people responsible for making sure the Mental Health Act is applied properly in hospital.²⁰

If the FTT or the hospital managers think you should be discharged, they will tell the Ministry of Justice. It is up to the Ministry of Justice to decide whether they give permission for you to be discharged.²¹

An independent mental health advocate (IMHA) can tell you more about your right to appeal, and how to do it.

There is more information about discharge in [section 7](#) of this factsheet.

What information should I be given?

As soon as possible after you are put on this section you should be given information on:^{22, 23}

- how the Mental Health Act applies to you,
- your right to appeal to tribunal,
- complaints, advocacy, and legal advice,
- safeguarding, and
- the role of the Care Quality Commission (CQC) in investigating complaints about professionals' use of the Mental Health Act.

You must be given this information:^{24,25}

- verbally and in writing, and
- in a format and language you understand.

Can I complain if I am treated badly?

You can complain if you are unhappy with the way you are treated in hospital.²⁶ An independent mental health advocate (IMHA) can help you to complain.

You can ask a member of hospital staff for a copy of the complaints policy.

If you're not happy with the hospital's response to your complaint, you can complain to the Care Quality Commission (CQC).²⁷ Their contact details are in the [Useful contacts](#) section this factsheet.

You can find more information about '**Complaints against the NHS and social services**' at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

Can I have visitors and contact people?

You generally have the right to:²⁸

- see anyone you want to see,
- see your visitors in private, and
- contact people by phone or in writing.

You should be encouraged to have visitors. And visits should be made as easy and comfortable as possible for you and your visitors.²⁹ Sometimes your responsible clinician RC can stop a visitor seeing you. This is usually if your RC thinks your visitor will:³⁰

- have a bad effect on your wellbeing or mental health, or
- be disruptive and a risk to security.

If your RC stops a visitor from seeing you, they should explain their decision:³¹

- verbally, and
- in writing.

If your RC stops you having visitors without there being a good reason for this, it may be a breach of your human rights.³²

You can ask an independent mental health advocate (IMHA) to:

- explain your rights to you, and
- help you to appeal the RC's decision if you want to.

Where can I get further information?

The Equality and Human Rights Commission have published guides on your rights when detained under the Mental Health Act in England. You can download free copies of the guides here:

www.equalityhumanrights.com/en/publication-download/your-rights-when-detained-under-mental-health-act-england.

Please see 'Download forensic introductory guide' and 'Download forensic full guide' at the bottom of the page.

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5. Can my doctor treat me if I don't consent to it?

Doctors should ask you if you consent to their recommended treatment, if appropriate.³³ But if you're in hospital under section 47 of the Mental Health Act, you can be given treatment for up to 3 months without your consent.^{34,35}

During this time, the hospital should still involve you in decisions about your treatment.³⁶ But they can continue to treat you if:

- you refuse the treatment, or.
- you don't have the mental capacity to give your consent.

After 3 months, your responsible clinician (RC) has to get permission from a SOAD to treat you without your consent. The treatment will only continue if the SOAD agrees you should have it.³⁷ A SOAD is a second opinion appointed doctor.

Some treatments can't be given to you without your consent, even if a SOAD agrees. This includes electroconvulsive therapy (ECT).³⁸ But a doctor can give you ECT without your consent, if it's immediately necessary to:³⁹

- save your life, or
- stop your mental health getting much worse. This only applies if the ECT doesn't have negative side effects that can't be reversed.

What can I do if I'm unhappy about my treatment?

If you're unhappy about your treatment you can.

- Speak to your named nurse or psychiatrist and explain why.
- Get support from an independent mental health advocate (IMHA). They can help you to raise any issues you have about your care and treatment.
- Make a complaint.
- Contact the hospital's PALS service about the issue. PALS ensure that the NHS listens to patients, their relatives, carers and friends. PALS answer questions and resolves concerns as quickly as possible. You can search for the local PALS service at: [www.nhs.uk/service-search/other-services/Patient%20advice%20and%20liaison%20services%20\(PALS\)/LocationSearch/363](http://www.nhs.uk/service-search/other-services/Patient%20advice%20and%20liaison%20services%20(PALS)/LocationSearch/363)

You can find more information about:

- Electroconvulsive Therapy (ECT)
- Advocacy
- Complaints about the NHS or social services.

at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

6. Can I claim welfare benefits?

Under a section 47/49 hospital order, you are serving a custodial sentence because of a criminal conviction. Your entitlement to most benefits is affected while serving your prison sentence.⁴⁰

You will no longer be entitled to some benefits while other benefits may be suspended. And some benefits may only be payable for a short period.³⁷

If you need advice about your benefits, you can contact the charities Unlock or Prison Reform Trust. Their details are in the [Useful contacts](#) section of this factsheet.

Can I apply for welfare benefits on a notional section 37?

If you're still in hospital under the Mental Health Act after your sentence has ended, this is known as a being on a 'notional section 37.' You might be entitled to some welfare benefits.

You can find more information about '**Going into hospital - Money matters**' at: www.rethink.org/advice-and-information/living-with-mental-illness/money-benefits-and-mental-health/

7. What might happen after this section?

The following things could happen after your detention in hospital under section 47 of the Mental Health Act ends. You can.

- Be discharged on parole, and you are allowed to serve the rest of your sentence in the community, on licence.⁴¹ There is more information about parole in [section 4](#) of this factsheet.
- Be released under the supervision of the National Probation Service (NPS) or a Community Rehabilitation Company (CRC).⁴²
- Be transferred back to prison.⁴³ The prison healthcare team will manage your care.
- Stay in hospital and reach the end of your prison sentence. But your responsible clinician thinks you need to stay in hospital under the Mental Health Act. This is explained in [section 4](#) of this factsheet.

You can find more information about:

- Healthcare in prison
- Prison - Planning for release
- Section 37 of the Mental Health Act

at www.rethink.org. Or call our General Enquiries team on 0121 522 7007, and ask them to send you a copy of our factsheet.

8. What sort of aftercare will I get?

The NHS and social services must provide you with free aftercare for your mental health and social care needs. This is your legal right under Section 117 of the Mental Health Act.

‘Aftercare’ can mean anything that:⁴⁴

- meets a need you have because of the mental health condition that caused you to be detained, and
- reduces the risk that your condition will deteriorate.

This can include things like social care, supported housing and treatment for your mental health.

You can find more information about ‘**Section 117 aftercare**’ at www.rethink.org. Or call our General Enquiries team on 0121 522 7007, and ask them to send you a copy of our factsheet.

9. Do I have to tell employers that I have been on this section?

Sometimes you have to tell people about criminal convictions. For example, when you apply for a job. But you usually don’t have to tell anyone once your conviction is ‘spent’.

Different types of conviction become spent at different times.

You can find more information about ‘**Criminal convictions – When and how to tell others**’ at www.rethink.org. Or call our General Enquiries team on 0121 522 7007, and ask them to send you a copy of our factsheet.

You can find more information about:

- Complaints
- Legal advice
- Mental Health Act
- Prison - What happens while I am in prison?

at www.rethink.org. Or call our General Enquiries team on 0121 522 7007, and ask them to send you a copy of our factsheet.

Unlock

A charity led by ex-offenders. They give information on things like banking, insurance, employment, and how benefits and housing are affected by being in prison. Unlock are a very small team, so they ask you to go on the website and read through the information there, before you contact them.

Telephone: 01634 247350. (Monday to Friday, 10am-4pm.)

Text or WhatsApp: 07824 113848

Address: theHelpline, Unlock, Maidstone Community Support Centre, 39-48 Marsham Street, Maidstone, Kent, ME14 1HH

Email: Online form - <https://infohub.typeform.com/to/zguWrK>

Website: www.unlock.org.uk

Prison Reform Trust

This is an independent charity that works to improve support for prisoners. They run a helpline that advises prisoners on various issues.

Freephone helpline: 0808 802 0060. (Monday 3pm–5pm and Thursday 10:30am–12:30pm)

Address: Prison Reform Trust, FREEPOST ND 6125, London, EC1B 1PN

Email: advice@prisonreformtrust.org.uk

Website: www.prisonreformtrust.org.uk

Care Quality Commission (CQC)

They investigate complaints about how professionals use their powers and carry out their duties under the Mental Health Act.

Telephone: 03000 616 161 (option 1)

Email: enquiry@cqc.org.uk

Website: www.cqc.org.uk/contact-us/how-complain/complain-about-use-mental-health-act

¹ s47(1) Mental Health Act 1983 c.20.

² S49 Mental Health Act 1983 c.20.

³ Department of Health. *The Good practice procedure. The Transfer and remission of adult Prisoners under Section 47 and 48 of the Mental Health Act 1983.* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/215648/dh_125768.pdf appendix 1 (accessed 4th June 2021).

⁴ Department of Health. *The Good practice procedure. The Transfer and remission of adult Prisoners under Section 47 and 48 of the Mental Health Act 1983.* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/215648/dh_125768.pdf appendix 1 (accessed 4th June 2021).

⁵ s47(1), Mental Health Act 1983 c.20.

⁶ s47(2). Mental Health Act 1983 c.20.

⁷ s47(2). Mental Health Act 1983 c.20.

⁸ s50(1). Mental Health Act 1983 c.20.

⁹ s50(2). Mental Health Act 1983 c.20.

¹⁰ s41(5). Mental Health Act 1983 c.20.

¹¹ Ministry of Justice. *Mentally disordered offenders - the restricted patient system.* London: Ministry of Justice; September 2020. Para 5.3.1.

www.gov.uk/government/publications/mentally-disordered-offenders-the-restricted-patient-system. (accessed 4th June 2021).

¹² Ministry of Justice. *Mentally disordered offenders - the restricted patient system*. London: Ministry of Justice; September 2020. Para 5.3. (accessed 4th June 2021).

¹³ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. Paragraph 29.8.

¹⁴ Department of Health. *Mental Health Act 1983: Code of Practice*. London: TSO; 2015. Para 6.8.

¹⁵ Department of Health. *Mental Health Act 1983: Code of Practice*. London: TSO; 2015. Para 6.12.

¹⁶ s130D (1). Mental Health Act 1983. c.20.

¹⁷ Department of Health. *Reference Guide to the Mental Health Act 1983*. Norwich: TSO; 2015, paragraph 6.2.

¹⁸ s.70. Mental Health Act 1983 c.20.

¹⁹ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. paragraph 38.2

²⁰ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. paragraph 37.3.

²¹ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. paragraph 38.2.

²² s132(1). Mental Health Act 1983 c.20.

²³ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. paragraph 4.12.

²⁴ s132(3). Mental Health Act 1983 c.20.

²⁵ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. paragraph 4.10.

²⁶ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. paragraph 4.12.

²⁷ Care Quality Commission (CQC). *Complaining about the use of the Mental Health Act*. Newcastle upon Tyne: CQC; October 2012. Page 2.

²⁸ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. paragraph 11.4.

²⁹ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. paragraph 11.5.

³⁰ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. paragraphs 11.14-11.15.

³¹ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. paragraph 11.16.

³² Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. paragraph 11.13.

³³ Department of Health. *Mental Health Act 1983: Code of Practice*. London: TSO; 2015. Para 24.41

³⁴ s63. Mental Health Act 1983 c.20.

³⁵ s58(1)(a). Mental Health Act 1983 c.20.

³⁶ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. paragraph 24.41.

³⁷ s58(3)(b). Mental Health Act 1983 c.20.

³⁸ s58A(5). Mental Health Act 1983 c.20.

³⁹ s62(1). Mental Health Act 1983 c.20.

⁴⁰ Child Poverty Action Group. Chapter 3: Prisoners. *Welfare Benefits and Tax Credits Handbook 2020/2021*. <https://askcpag.org.uk/?id=-221252>. (Accessed 1 April 2021).

⁴¹ s50(1)(b). Mental Health Act 1983 c.20.

⁴² s50(1)(b). Mental Health Act 1983 c.20.

⁴³ s50(1)(a). Mental Health Act 1983 c.20.

⁴⁴ s117(6). Mental Health Act 1983 c.20.

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Rethink Mental Illness Advice Service

Phone 0808 801 0525
Monday to Friday, 9:30am to 4pm
(excluding bank holidays)

Email advice@rethink.org



Patient Information Forum

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or write to us at Rethink Mental Illness:

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Solihull
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Need more help?

Go to rethink.org for information on symptoms, treatments, money and benefits and your rights.

Don't have access to the web?

Call us on 0121 522 7007. We are open Monday to Friday, 9am to 5pm, and we will send you the information you need in the post.

Need to talk to an adviser?

If you need practical advice, call us on: 0808 801 0525 between 9:30am to 4pm, Monday to Friday. Our specialist advisers can help you with queries like how to apply for benefits, get access to care or make a complaint.

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