Section 47/49 of the Mental Health Act

Transfer of a sentenced prisoner to hospital

This factsheet looks at section 47/49 of the Mental Health Act 1983. It explains when and how courts use this section. And it explains what your rights are on this section.

KEY POINTS

- The Mental Health Act is the law that says when you can be detained in hospital.
- 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 be so unwell that you need treatment in hospital.
- The prison will ask the Secretary of State for Justice for permission to transfer you to hospital.
- Often the Secretary of State will 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.
- The hospital can treat you 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 do not agree with being on this section, you can appeal to a First-tier Tribunal (FTT). And to the hospital managers. But, for you to be discharged, the Secretary of State 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.1
This factsheet covers:

1. What professionals might be involved in this section?
2. When do prisons use this section?
3. How do prisons use this section?
4. How long will I be on this section?
5. What are my rights?
6. Can my doctor treat me if I don’t want it?
7. What might happen after this section?
8. What sort of aftercare will I get?

1. What professionals might be involved in this section?

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.

**Second Opinion Appointed Doctor (SOAD):** a SOAD is an independent doctor who can make decisions about your treatment under the Mental Health Act. After you have been detained for 3 months, they will decide if you should continue to get treatment. And if your views and rights have been taken into account.

**Secretary of State for Justice:** the Ministry of Justice (MoJ) takes on this role. It is a government department that is involved in your care if you are under a ‘restriction order’ or a ‘restriction direction’. This means, if you are under sections 41 or 49 of the Mental Health Act. 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.
2. When do prisons use this section?

The prison can use section 47 to transfer you from prison to hospital. They can only do this if you are a sentenced prisoner, and your mental health needs treatment in hospital.\(^2\)

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.

Section 47 can have a restriction direction added to it, known as a ‘section 49’. This makes it a section 47/49.

The restriction direction means that there are restrictions on both you and your Responsible Clinician (RC). For example, your RC needs to get permission from the Secretary of State for Justice before you can leave hospital.

3. How do prisons use this section?

The prison healthcare team arranges for 2 doctors to assess you.\(^3\) Often, both doctors will not assess you at the same time.\(^4\)

In their assessment, the doctors will look at 3 things:\(^5\)

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

If the doctors decide that these 3 things apply to you, they will ask the Secretary of State for Justice for permission to move you to hospital.

If the Secretary of State gives their permission for you to be moved to hospital, they will 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.

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.\(^6\)

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.

4. How long will I be on this section?

You could be discharged from this section, 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 Secretary of State for Justice would need to give their permission for you to be transferred back to prison.⁷

If your sentence has a fixed end date, the section 49 restriction runs out when your sentence ends.⁸

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 37.⁹ ‘Notional’ means you will be treated as though you are in hospital under a section 37 hospital order.¹⁰

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

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

Under a notional section 37, you might be entitled to some welfare benefits.

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.¹¹

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.

Community Treatment Orders (CTOs)

You might leave hospital on a Community Treatment Order (CTO). You can only be given a CTO if you are an unrestricted patient.¹² This would happen 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.
There is more information about FTTs in section 5 of this factsheet. You can find more information about:

- Community Treatment Orders (CTOs)
- Going into hospital - money matters
- Prison - planning for release
- Section 37

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.

5. What are my rights?

Can I appeal my section?

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.13

You can appeal:14

- 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.15 The hospital managers are the people responsible for making sure the Mental Health Act is applied properly in hospital.16

If the FTT or the hospital managers think you should be discharged, they will tell the Secretary of State for Justice. It is up to the Secretary of State to decide whether they give permission for you to be discharged.17

There is more information about discharge in section 8.

Do I have the right to support whilst I am detained?

If you are unhappy with any part of your care and treatment, you can speak to an Independent Mental Health Advocate (IMHA).18 IMHAs are free to use, and don't work for the hospital. They can help you to:

- understand your rights,
- understand your treatment, and the reasons for it, and
- speak to staff about any worries or problems you have.

Hospital staff must tell you about the IMHA service, and how to contact it.19
You can find more information about:

- Advocacy
- Prison- planning for release

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 my doctor treat me if I don’t want it?

Under section 47/49, you can be given treatment for up to 3 months without your consent.\(^{20,21}\)

During this time, the hospital should still involve you in decisions about your treatment.\(^ {22}\) But they can continue to treat you if you refuse the treatment. Or if you don’t have the mental capacity to give your consent.

After 3 months, your Responsible Clinician (RC) has to get permission from an independent doctor, called a Second Opinion Appointed Doctor (SOAD) to treat you without your consent. The treatment will only continue if the SOAD agrees you should have it.\(^ {23}\)

Some treatments cannot be given to you without your consent, even if a SOAD agrees. This includes electroconvulsive therapy (ECT).\(^ {24}\) But a doctor can give you ECT without your consent, if it’s immediately necessary to: \(^ {25}\)

- 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.

You should speak to your nurse or RC if you are unhappy with your treatment.

You can also speak to an Independent Mental Health Advocate (IMHA), who can help you to raise any issues you have with your care and treatment.

You can find more information about:

- Mental capacity and mental illness
- Electroconvulsive therapy (ECT)

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.
7. What might happen after this section?

The following things could happen after your section 47/49, ends. These are:

- You are discharged on parole, and you are allowed to serve the rest of your sentence in the community, on licence. There is more information about parole in section 4 of this factsheet.
- You are released under the supervision of the National Probation Service (NPS) or a Community Rehabilitation Company (CRC).
- You are transferred back to prison. The prison healthcare team will manage your care.
- You stay in hospital, and reach the end of your prison sentence. But your Responsible Clinician (RC) thinks you need to stay in hospital. This is explained in section 4 of this factsheet.

You can find more information about:
- Healthcare in prison
- Prison planning for release
- Section 37

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?

Section 117 of the Mental Health Act says that the NHS and social services must provide you with free aftercare. This can include things like supported housing and treatment.

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.

You can find more information about:
- Complaints
- Complaints about prison
- 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.

REFERENCES

2 s47(1) Mental Health Act 1983 c.20.
4 As note 3, appendix 1, flowchart.
5 As note 2 (MHA 1983), s47(1).
6 As note 2 (MHA 1983), s47(2).
7 As note 2 (MHA 1983), s50(1).
8 As note 2 (MHA 1983), s50(2).
9 As note 2 (MHA 1983), ss. 49(1) and s41(5).
11 As note 10, section 5.3.
13 As note 1, paragraph 6.2.
14 As note 2 (MHA 1983), s69(2) (b) and 70.
15 As note 12, paragraph 38.2.
16 As note 12, paragraph 37.3.
17 As note 12, paragraph 38.2.
18 As note 2 (MHA 1983), s130C (1).
19 As note 2 (MHA 1983), s130D (1).
20 As note 2 (MHA 1983), s63.
21 As note 2 (MHA 1983), s58(1).
22 As note 12, paragraph 24.41.
23 As note 2 (MHA 1983), s58(3)(b).
24 As note 2 (MHA 1983), s58A(5).
25 As note 2 (MHA 1983), ss. 62(1) and (1A).
26 As note 2 (MHA 1983), s50(1)(b).
27 As note 2 (MHA 1983), s50(1)(b).
28 As note 2 (MHA 1983), s50(1)(a).
This factsheet is available in large print.

Rethink Mental Illness Advice Service

Phone 0300 5000 927
Monday to Friday, 9:30am to 4pm
(excluding bank holidays)

Email advice@rethink.org

Did this help?
We’d love to know if this information helped you.

Drop us a line at: feedback@rethink.org

or write to us at Rethink Mental Illness:
RAIS
PO Box 17106
Birmingham B9 9LL

or call us on 0300 5000 927.

We’re open 9:30am to 4pm
Monday to Friday (excluding bank holidays)

Need more help?
Go to www.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 0300 5000 927 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.

Can you help us to keep going?
We can only help people because of donations from people like you. If you can donate please go to www.rethink.org/donate or call 0121 522 7007 to make a gift. We are very grateful for all our donors’ generous support.