

Section 48/49

Transfer of a prisoner on remand to hospital

This factsheet looks at section 48/49 of the Mental Health Act. It looks at the professionals you might come across in hospital, when and how the courts use this section. It explains what your rights are during this section and what could happen afterwards.



KEY POINTS

- The Mental Health Act is the law which mental health professionals use section 48 to bring you to hospital for treatment. This is also known as being 'sectioned'.
- You must need treatment in hospital in the interests of your own health or safety or to protect other people.
- The prison can ask the Ministry of Justice to transfer you to hospital using this section if you are on remand and your mental illness cannot be managed in prison.
- The hospital can you move back to prison if your mental health gets better.
- You can appeal to the Hospital Managers and the Mental Health Review Tribunal (MHRT) if you do not agree with being on this section.
- The hospital can treat you without your permission for up to 3 months.
- When you are discharged, you can get free aftercare services under section 117 of the Mental Health Act.

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1. What professionals might I come across in hospital?

There are different professionals that might be involved in your care while you are in hospital under the Mental Health Act. We talk about some of these professionals in this factsheet.

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 and social worker can be ACs. They are trained to assess you for mental illness.

Responsible Clinician (RC): the RC is responsible for your care or treatment. The RC decides if you can leave hospital or they can renew your section. A RC is an Approved Clinician with more training.

Second Opinion Appointed Doctor (SOAD): a SOAD is an independent doctor who can make decisions about your treatment under the Mental Health Act. They decide if you should continue getting treatment and if your views and rights have been taken into account.

Secretary of State for Justice: the Ministry of Justice (MOJ) take on this role. They are a government department that is involved in your care if you have a restriction order (section 41 or 49 of the Mental Health Act). The MOJ decide things such as whether you can move from prison to hospital, or from hospital to prison. Your Responsible Clinician needs to get permission from them before letting you leave hospital.

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2. When do prisons use this section?

The prison will use section 48 to transfer you from prison to hospital. They do this if you are on remand and your mental illness needs treatment in hospital. You are on remand if your court case is still going on or you are waiting for the court to sentence you.

Section 48 can have a restriction order, known as section 49. This makes it a section 48/49. The restriction order means that there are restrictions on you and your Responsible Clinician (RC). One restriction is your RC needs to get permission from the Secretary of State for Justice before you can leave hospital.

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3. How do prisons carry out this section?

A senior healthcare worker at the prison needs to get two doctors to assess you. They need to decide if you have a mental illness that needs treatment in hospital.

If they decide you do need treatment in hospital, the healthcare worker asks The Secretary of State for Justice if they can move you to hospital. If they agree the managers of the hospital where you are going should find you a bed within 14 days.

You might need to wait in prison until a bed is available. Some prisons have healthcare units where you could stay. This is similar to being in hospital. You can find more information about 'Healthcare in Prison' at www.rethink.org. Or call 0121 522 7007 and ask for the information to be sent to you.

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4. How long will I be on this section?

You will stay on this section until your Responsible Clinician (RC) thinks you don't need to be in hospital anymore. They will move you back to prison. If your RC does not think you should go back to prison, this section will last until the court deals with your case.

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5. What are my rights?

You can appeal to the Mental Health Review Tribunal (MHRT). You can do this one time during your first six months in hospital and one time during the second six months and then yearly.

You can appeal your section to the Hospital Managers.

They can tell the Secretary of State for Justice that they think you should be discharged. It is up to the Secretary of State for Justice to allow the hospital to discharge you. If they discharge you, you will go to prison while your court case continues.

If you are unhappy about any part of your care and treatment while in hospital, you can speak to an Independent Mental Health Advocate (IMHA). They can help you raise any issues you have. The hospital staff can give you details of the local advocacy service. You can also find

more information about **'Advocacy'** at www.rethink.org. Or call 0121 522 7007 and ask for the information to be sent to you.

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6. Can the doctor treat me if I don't want it?

Doctors can treat you for up to three months without your agreement. There are rules they have to follow if they want to continue treatment and you don't want it. An independent doctor, called a Second Opinion Appointed Doctor (SOAD), will assess you to give your doctor their view. They can only continue to treat you if the independent doctor agrees you need it.

Some treatments cannot be given to you without your consent. This includes electroconvulsive therapy (ECT). You can find more information about **'Electroconvulsive Therapy (ECT)'** at www.rethink.org. Or call 0121 522 7007 and ask for the information to be sent to you.

You should speak to your named nurse or psychiatrist if you are unhappy about your treatment. You can also speak to an Independent Mental Health Advocate (IMHA). They can help raise any issues you have about your care and treatment.

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7. Will I have to go back to prison?

The Secretary of State for Justice can decide to transfer you back to prison at any time. This could happen if your Responsible Clinician (RC) feels your mental illness has improved and can go back to prison.

If the courts find you guilty of an offence they can give you a prison sentence. If you still need hospital treatment they can give you a hospital order. You can find more information about 'Section 37' at www.rethink.org. Or call 0121 522 7007 and ask for the information to be sent to you.

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8. Will I have to go back to court?

You might need to go back to court if your case hasn't finished. You might need to go to court for sentencing if you plead guilty or are found guilty.

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9. What might happen after this section?

After being on section 48/49, three things could happen.

- The Secretary of State for Justice could send you to prison while your court case is still happening. They could do this if your

mental illness gets better and the prison healthcare team can treat your condition.

- The court finds you not guilty. You may be able to leave hospital after this. But the healthcare professionals feel you still need treatment in hospital. They could arrange for you to have a Mental Health Act assessment. They may put you under a different section of the Mental Health Act (such as section 3).
- The court finds you guilty and gives you another sentence, such as a prison sentence. However, if it feels you still need treatment in hospital, it could give you a hospital order such as section 37 or 37/41.

You can find more information at www.rethink.org about:

- **Criminal Courts and Mental Health**
- **Mental Health Act**
- **Section 37/41**

Or call 0121 522 7007 and ask for the information to be sent to you.

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10. What sort of aftercare could I get?

The NHS and Social Services must provide you with free aftercare services under section 117 of the Mental Health Act. This can include things such as supported housing as well as treatment. You can find more information about '**Section 117 aftercare**' at www.rethink.org. Or call 0121 522 7007 and ask for the information to be sent to you.

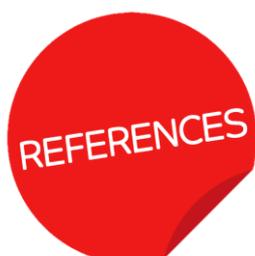
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You can find more information at www.rethink.org about:

- Complaints
- Complaints about Prison
- Mental Health Act
- Legal Advice
- Prison – What happens while I am in prison
- Prison – Planning for Release

Or call 0121 522 7007 and ask for the information to be sent to you



South London and Maudsley NHS Foundation Trust. *The Maze – A Practical Guide to the Mental Health Act 1983 (Amended 2007)*. UK: South London and Maudsley NHS Foundation Trust; 2010.

The Mental Health Act 1983. *Section 47*. Available from <http://www.legislation.gov.uk/ukpga/1983/20/section/48> (accessed August 2015).

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Rethink Mental Illness Advice Service

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