

Section 47/49

Transfer of a sentenced prisoner to hospital

This factsheet looks at section 47/49 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 47/49 to bring you to hospital for treatment. This is also known as being 'sectioned'.
- You must need treatment in hospital. This must be the best thing for your health or safety or to protect other people.
- The prison can ask the Ministry of Justice to transfer you to hospital using this section. They can do this if you are a sentenced prisoner and your mental illness needs treatment in hospital.
- 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 section 37 notional.
- 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. Professionals you might come across

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 can use a section 47 to transfer you from prison to hospital. They can only do this if you are a sentenced prisoner and your mental illness needs treatment in hospital.

Section 47 can have a restriction order, known as section 49. This makes it a section 47/49. The restriction order 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.

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3. How do prisons use this section?

A senior healthcare worker at the prison needs to arrange for two doctors to assess you. In their assessment, they need to decide whether or not 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 for you to be moved to hospital. If they agree for you to be transferred, the managers of the hospital where you will be staying should find a bed within 14 days.

You might need to wait in prison for a bed to become available. Some prisons have healthcare units where you could stay, which are 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 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 illness has improved and the prison can now manage it. The Secretary of State for Justice would need to agree to transfer you back to prison.

If your sentence means you can apply for parole, you could do this while in hospital. You could be discharged from hospital on parole. If you don't know whether you are able to apply for parole, ask a member of hospital staff or your (RC).

If you are not transferred back to prison, then your section 47/49 lasts until the earliest date you would have been released from prison.

If you are in hospital and your sentence ends but your RC and the Secretary of State for Justice think you should stay in hospital for treatment, this section becomes a section 37 "notional". This means you would be treated as though you are in hospital under a section 37 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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5. What are my rights?

You have the right to appeal to the Mental Health Review Tribunal (MHRT) once during your first six months in hospital, once during the second six months and then yearly.

You have the right to appeal 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 give permission for you to be discharged.

If you are discharged from this section during your original prison sentence, you will go back to prison. If your prison sentence has ended, you will be discharged into the community.

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 I be treated against my will?

You can be given treatment for up to three months without your consent. If the hospital wants to continue treatment and you do not or cannot give consent, an independent doctor known as a Second Opinion Appointed Doctor (SOAD) will visit you to give their opinion. The treatment will only continue if the independent doctor agrees you should have 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) who 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. This could happen if your Responsible Clinician (RC) feels that your mental illness has improved and could now be managed in prison.

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8. What might happen after this section?

After being on section 47/49, four things could happen. These are:

- The Secretary of State for Justice could transfer you back to prison if your mental illness improves and the prison healthcare team can manage your condition.
- You are still in hospital and reach the end of your prison sentence. If your Responsible Clinician (RC) thinks you need to stay in hospital, your section would become a section 37 notional.
- You are still in hospital and reach the end of your prison sentence. If your RC does not think you need to stay in hospital, you could leave hospital. You will have the same conditions as if you were being released from prison (for example, probation services may supervise you and you need to meet licence conditions).
- The parole board could discharge you from hospital on parole if you can apply for parole as part of your sentence.

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

- **Healthcare in Prison**
- **Prison – Planning for release**
- **Section 37**

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

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9. What sort of aftercare can I expect?

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 on www.rethink.org about:

- Advocacy
- Complaints
- Complaints about Prison
- Mental Health Act
- Forensic Mental Health Services
- Legal Advice
- Healthcare in Prison
- Prison – What happens while I am in prison
- Prison – Planning for Release
- Section 117 Aftercare
- Section 37

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/47> (accessed August 2015).

The Mental Health Act 1983. *Section 49*. Available from <http://www.legislation.gov.uk/ukpga/1983/20/section/49> (accessed August 2015).

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Rethink Mental Illness Advice Service

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