

Section 48/49 of the Mental Health Act

Transfer of an unsentenced prisoner to hospital

You might be on remand in prison or in an immigration detention centre and be experiencing severe mental illness. Professionals can decide to transfer you to hospital. This can be done under section 48/49 of the Mental Health Act 1983. This factsheet explains when and how you might be transferred to hospital and what your rights are. This factsheet is for those on remand in prison or in an immigration detention centre and experiencing mental illness. And their friends and family too.

Key Points.

- If you are on remand in prison or you're in an immigration detention centre and experiencing mental illness you can be transferred to hospital. This can be done under section 48/49 of the Mental Health Act 1983.
- To be transferred to hospital, you must have a mental disorder and be so unwell that you need treatment in hospital.
- Under section 49 of the Mental Health Act, the Ministry of Justice can add what's known as a 'restriction direction.' They can do this if they feel that you are a risk to the public. This places extra restrictions on you and the responsible clinician in charge of your care.
- The prison must ask the Ministry of Justice for permission to transfer you to hospital.
- You can be moved back to prison or the immigration detention centre if your mental health gets better.
- You can appeal to the hospital managers and a tribunal if you don't think that you should be detained in hospital.
- The hospital can treat you with medication without your permission.
- When you are discharged, you can get free aftercare services under section 117 of the Mental Health Act.

This factsheet covers:

1. [When can I be transferred to hospital?](#)
2. [How long can I be detained in hospital?](#)
3. [What are my rights in hospital?](#)
4. [Can doctors treat me with medication if I do not agree?](#)
5. [Do I have a right to free aftercare?](#)

A list of professionals you might come across if you're detained 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, 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. 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.

[Top](#)

1. When can I be transferred to hospital?

If you're on remand in prison or in an immigration detention centre and are experiencing mental disorder you can be transferred to hospital. This can be done under section 48/49 of the Mental Health Act 1983.

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

You can only be transferred from prison or an immigration detention centre to hospital if: ^{1, 2, 3}

- you are an unsentenced prisoner, if you're in prison,
- you're so unwell that you need treatment in hospital and 2 doctors agree to this,
- the Ministry of Justice agrees to your transfer.

Ministry of Justice acts on behalf of the Secretary of State for Justice.

What is an unsentenced prisoner?

An unsentenced prisoner is someone detained in prison who hasn't been sentenced for committing a crime.

You might be detained in prison because: ⁴

- you're awaiting trial,
- you're on remand waiting for the court to sentence you,
- you haven't paid fines or debts, or
- you haven't done what the court ordered you to do.

If you haven't paid fines or debts or done what the court ordered, you're known as a 'civil prisoner.'

If you've arrived in the UK, you might be detained in an immigration detention centre if you're waiting:⁵

- for permission to enter the UK, or
- to be deported or removed from the UK.

What is a restriction direction?

Under section 49 of the Mental Health Act, the Secretary of State for Justice can add what's known as a 'restriction direction.' They can do this if they feel that you're a risk to the public.

A restriction direction puts extra restrictions on you and your responsible clinician (RC). ⁶ For example, your RC needs to get permission from the Ministry of Justice before you can leave hospital.

When will doctors assess me?

Healthcare professionals in prison or your immigration detention centre can ask doctors to assess you. They can do this if they think you are experiencing serious mental illness and think you might need to be in hospital.

They will arrange for 2 doctors to assess you.⁷ The doctors don't have to assess you at the same time.⁸

In their assessment, the doctors will consider 3 things:⁹

- 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 for in hospital.

If the doctors decide that these 3 things apply to you, they will ask the Ministry of Justice's permission to move you to hospital. If permission is given, the Ministry will complete a document called a 'transfer direction'. A transfer direction is a warrant.¹⁰

How long will it take for me to be transferred to hospital?

A hospital bed should be found for you within 14 days.¹¹

If a bed isn't found within 14 days, the transfer direction expires. The prison or immigration detention centre healthcare team will have to start the process again, if necessary.¹²

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.

[Top](#)

2. How long can I be detained in hospital?

You will be detained in hospital under section 48/49 until.

- You are judged well enough to be prison or your immigration detention centre.^{13,14}
- The court release you on bail.¹⁵
- The court finds you not guilty or the legal proceedings against you stop.¹⁶
- Your remand expires.¹⁷
- The court finds you guilty.¹⁸

Will I be transferred back to prison or my immigration detention centre?

You will be kept in hospital until:

- the Ministry of Justice gives their permission to send you back to prison or your immigration detention centre,¹⁹ or
- your case has been decided by the court.²⁰

The Ministry of Justice can transfer you back to prison or your immigration detention centre if: ²¹

- your responsible clinician or the First-tier Tribunal say you no longer need treatment in hospital, or
- there is no effective treatment available for you.

You can't be returned to custody if you are an unrestricted patient.²²

Will I have to go back to court?

You might need to go to court if:

- you haven't yet stood trial, or
- you plead guilty or are found guilty and are awaiting your sentence.

Will I have to stay in hospital if the court finds me not guilty?

Your responsible clinician will either: ²³

- discharge you from hospital, or
- continue to detain you in hospital under a different section of the Mental Health Act, such as section 3.

What will happen if the court finds me guilty?

The court might: ^{24,25}

- give you a prison sentence, or
- detain you in hospital under a different section of the Mental Health Act, such as section 37.

What will happen if my remand expires?²⁶

This will only apply to you if you are placed on remand by the magistrate's court. When your remand expires your detention in hospital under section 48 of the Mental Health Act will end. But you could be detained in hospital under a different section of the Mental Health Act, such as section 3.

Your case might be transferred from the magistrate's court to the Crown Court. If it is, your detention in hospital under section 48 of the Mental Health Act will continue.

I'm a civil prisoner or I'm being held under immigration laws. How long will I be detained in hospital under section 48/49?

If you haven't paid fines or debts or done what the court ordered, you're known as a 'civil prisoner.'

You can be held in an immigration detention centre if you don't have immigration status to remain in the UK.

You will be kept in hospital under section 48/49 until: ²⁷

- you are transferred somewhere else. You are likely to be transferred back to the place where you were before you were sent to hospital, or
- the period for your detention expires. For example, if you are taken to a detention centre then transferred to hospital but your detention expires, this section would expire at the same time.

You can only be transferred to custody if there is a section 49 restriction direction placed on you.²⁸ Custody is likely to be prison or a detention centre.

The Ministry of Justice can transfer you back to the place where you were before you were sent to hospital if: ²⁹

- your responsible clinician or the First-tier Tribunal say you no longer need treatment in hospital, or
- there is no effective treatment available for you.

If my detention expires, will I be kept in hospital?

Your healthcare professionals may feel that you still need treatment in hospital. They could arrange for you to have a Mental Health Act assessment. They may detain in hospital you under a different section of the Mental Health Act, such as section 3.

You can find more information about:

- Mental Health Act
- Criminal courts and mental illness
- Section 37 of the Mental Health Act
- Section 37/41 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.

[Top](#)

3. What are my rights in hospital?

What are my rights to information?

After you are detained in hospital, you should be given information as soon as possible on:³⁰

- how the Mental Health Act applies to you,
- complaints, advocacy and legal advice,
- safeguarding, and
- the role of the Care Quality Commission (CQC).

You must be given information:³¹

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

Can I get an advocate?

You have the right under the Mental Health Act to see an independent mental health advocate (IMHA).³² They are free to use and are independent of people like the NHS, the courts and the Ministry of Justice.

An IMHA can help you understand different things to do with your detention such as:³³

- your rights under the Mental Health Act,
- the parts of the Act that apply to you,
- any conditions or restrictions which affect you, and
- the reasons for any medical treatment you are having.

The IMHA can also:³⁴

- meet with you in private,
- look at your medical and social services records,
- speak to the people treating you,
- go with you to meetings with the people treating you, and
- represent you by speaking or writing on your behalf.

An IMHA can help you if you are unhappy about any part of your care and treatment while in hospital.

Hospital staff can tell you about the IMHA service at your hospital. You can usually find details of the local IMHA service by using an internet search engine.

For example, you could type: "Independent mental health advocate in Wolverhampton".

You can contact the IMHA service yourself.

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 under section 48/49?

If you think you shouldn't be in hospital you have the right to appeal to:

- the hospital managers, and
- a tribunal.

The hospital managers or the tribunal might agree that you can be discharged from hospital. But the Ministry of Justice must agree too if they've put a restriction direction on you.³⁵

How can I appeal to the hospital managers?

You have the right to appeal to the hospital managers.³⁶ The hospital managers are the people responsible for making sure the Mental Health Act is applied properly in hospital.³⁷ They're also known as the Mental Health Act managers.

There is nothing in law limiting the number of times you can appeal to the hospital managers. But the hospital may have a policy in place to say when you can appeal to them.

To help the managers decide if they should discharge you, they get written reports before seeing you.³⁸

Medical, nursing, and social care staff write reports. You have a right to see these reports. But sometimes you may not see all the information if it might harm your mental health to see it. If they keep information from you, they should explain their reasons.³⁹

A Mental Health Act managers' review is normally held on the ward or in a separate room.

The following people will usually be there.

- You
- The managers
- Your responsible clinician
- A nurse from the ward
- A social worker

The managers will have read through the reports. After this they will give you a chance to speak.⁴⁰ At the end of the hearing the hospital managers will decide if you can be discharged. All of them must agree for you to be discharged.⁴¹

If you want to appeal to the hospital managers tell a member of staff or an independent mental health advocate (IMHA).

How can I appeal to the tribunal?

The First-tier Tribunal is an independent panel that decides if you can be discharged from hospital.⁴²

The tribunal hearings usually take place at the hospital you are detained in.⁴³

You can appeal to the tribunal:⁴⁴

- once during the first 6 months of being in hospital,
- once during the following 6 months, and
- every year after that.

If the Ministry of Justice have put a restriction direction on you they must agree before you can be discharged.⁴⁵

The Ministry might put conditions on your discharge. This is called a 'conditional discharge'. If you don't follow these conditions, you can be recalled back to hospital.⁴⁶

If you are recalled back to hospital after being conditionally discharged, you can appeal to the tribunal:⁴⁷

- once after you have been in hospital between 6 and 12 months, and
- every year after that.

A tribunal must each have a: ⁴⁸

- legal member, who is usually a solicitor or a barrister,
- doctor, who is usually a psychiatrist, and
- a person who isn't medically or legally trained, but has mental health experience.

You, the responsible clinician, and social worker will be at the tribunal. The legal member will be in charge of the tribunal.⁴⁹

If you want to appeal to the tribunal, tell a member of staff or an independent mental health advocate (IMHA).

You can also apply using a T110 form.⁵⁰ . You can download the form from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748558/t110-eng.pdf. The form may be available on your ward, ask staff about this. If you would find it difficult to fill in the form yourself, ask the staff or an IMHA for help.

Can I make a complaint about my care or treatment?

You have a right to complain if you're unhappy about your care, treatment, or any other aspect of your detention.

You can ask your named nurse or responsible clinician for a copy of the complaints policy.

You can also speak to an independent mental health advocate (IMHA). They can help you to raise any issues you have or help you to make a complaint.

You can find more information about '**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.

Am I allowed to contact people and have visitors?

You have the right to:⁵¹

- see anyone you want to see, such as family or friends,
- see your visitors in private, including your own bedroom if you want, and
- contact people by phone or in writing.

You should be encouraged to have visitors. Visits should be made as easy and as comfortable as possible for you and your visitors.⁵²

But in some circumstances your responsible clinician (RC) can stop a visitor seeing you. The reasons for this will usually be:⁵³

- if your RC thinks the visitor will have a bad effect on your wellbeing or mental health, or
- if your RC thinks your visitor is disruptive and a risk to security.

If your RC stops a visitor from seeing you an independent mental health advocate (IMHA) can explain your rights to you.

What are my rights about restraint?

Restraint means that staff can use force against you. Restraint can be used by hospital staff when they are trying to stop you, or someone else, from getting hurt.⁵⁴

You have a right to only be restrained by professionals when:⁵⁵

- it's used for no longer than necessary to prevent harm to you or to others,
- it's no more than is needed to respond to that harm,
- it's the least restrictive option available,
- It's used in a way that minimises any risk to your health and safety, and
- it causes the minimum interference to your independence, privacy, and dignity.

You have a right to not be restrained:⁵⁶

- to punish you, or
- for the sole intention of inflicting pain, suffering or humiliation.

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.

[Top](#)

4. Can doctors treat me with medication if I do not agree?

Doctors can treat you for 3 months, even if you don't want it.⁵⁷

After 3 months they can only continue to treat you:⁵⁸

- with your consent, or
- if another doctor agrees that you need treatment. This doctor is called a second opinion appointed doctor (SOAD).

Can I be given electroconvulsive therapy (ECT)?

Doctors can't give you electroconvulsive therapy (ECT) without your consent unless:^{59, 60, 61}

- you lack mental capacity to make your own decision about treatment. And a SOAD agrees that you need it,
- it will save your life, or
- it will stop you getting very unwell from something that can't be reversed.

It is very rare that you will be given ECT without your permission.

You can find more information about:

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

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.

[Top](#)

5. Do I have a right to free aftercare?

When you leave hospital the NHS and social services must provide you with free aftercare services. They must do this under section 117 of the Mental Health Act.⁶²

Aftercare services provided free of cost must:⁶³

- meet a need you have because of your mental health condition, and
- reduce the risk that your condition will deteriorate.

This may include things such as therapies, prescription costs, services or social care.

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.

[Top](#)

Further Reading

You can find more information about:

- Complaints about prison
- Legal advice
- Prison – What happens while I am in prison
- 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.

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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