

Section 47/49 of the Mental Health Act 1983

S47 is used to transfer a serving prisoner from prison to a psychiatric hospital for assessment or treatment. S49 is a restriction direction which the Secretary of State for Justice usually places on a patient transferred from prison to hospital under section 47. The effect of this is to prevent the person being transferred from being granted leave or being discharged from section or without the Secretary of State's consent.

How does it work

If it is felt by healthcare workers at the prison that a prisoner may be suffering from a mental illness or mental disorder, they can arrange for two doctors to visit and assess them. If those doctors decide that the prisoner needs treatment or further assessment in a psychiatric hospital, the healthcare workers ask the Secretary of State for Justice to agree to the prisoner being moved.

If the Secretary of State agrees then a bed has to be found within 14 days of the s47 transfer direction being made. Whether a s49 restriction is also applied is entirely a matter of discretion for the Secretary of State.

How long does it last

A prisoner could be discharged from S47/49 and transferred back to prison at any time. This would normally happen if the doctor responsible for the prisoner's treatment in hospital felt that the prisoner's mental state had improved to the point that it could be managed in prison.

The Secretary of State however has ultimate control and can deny a request that someone be returned to prison.

Similarly, they can also order someone's return against the doctor's wishes.

If someone is still in hospital at the end of their sentence and it is felt that they still need treatment, they can still be detained under the provisions of Section 41(5) of the Mental Health Act 1983.

As this is somewhat unwieldy to say, and as s41(5) works exactly the same as s37, these people are colloquially known as "notional" s37 patients.

People with indeterminate sentences, whose sentence would not expire unless the Parole Board agreed that it should, are treated a little differently.

They remain in hospital until their treatment is complete. Whether they are then returned to prison depends on their personal mental state and the effect which prison has upon it.

Someone in this position may well be asked by their doctor to apply for a Mental Health Tribunal. In the course of the proceedings the doctor would agree that the person should be discharged from their section; but would also ask for a recommendation from the Tribunal that the Secretary of State for Justice allows that person to remain in hospital pending their Parole Board hearing. Such a recommendation is usually followed by the Secretary of State



Patient Rights

It is not uncommon for someone transferred to hospital from prison to be extremely unhappy about the move. Normally they are worried that their hospital stay might be longer than their prison sentence and they are, understandably, anxious about this.

If someone wants to challenge their section they have the right to apply for a Mental Health Tribunal to review detention in hospital. It is possible to make this application once during their first 6 months in hospital, once during the second 6 months and then once a year after that.

There is also a right to ask for a Hospital Managers Meeting. This would result in a panel convened by the hospital managers reviewing the detention in hospital. If the panel felt that the detention in hospital was not necessary, they could recommend to the Secretary of State for Justice that the patient be transferred back to prison. This recommendation is not binding. The Secretary of State would be unlikely to agree with this recommendation if the treating doctor still felt that there was a need for the person to receive treatment in hospital.

Leave

Leave is normally used to give the patient the opportunity to go out into the community for a period of time to test out whether or not they would be able to cope if they were discharged. In s47/49 cases, as the patient is also a prisoner, permission for leave can only be granted by the Secretary of State for Justice. Such permission has to be applied for by the patient's doctor and normally takes several months before it is granted.

The leave, when granted, will be time restricted and at first subject to other conditions, such as being accompanied by a nurse. If the time limits or conditions are not kept to by the patient, or if their mental health deteriorates, then the Secretary of State has to be notified and, in those instances, leave is normally revoked.

The patient's doctor retains the power to grant leave within any hospital grounds to which the public do not have access. This can include visits to the dining room, occupational therapy workshops and any internal hospital gardens. The exact rules on this are unique to each hospital and depend largely on the hospital layout.

Medication

A person detained under this section can be given medication against their wishes for the first 3 months from when medication was first given. Thereafter, except in emergency, if the person still does not consent to medication, the opinion of a second doctor must be sought.

Aftercare

If someone has been in hospital under this section whilst a serving prisoner, they have the right to free aftercare for their mental health condition when they are eventually discharged into the community. This can include help with finding supported housing, as well as more standard treatment.

This is a requirement placed on the patient's local Social Services Authority and Clinical Commissioning Group by s117 of the Mental Health Act.

