

Section 37 of the Mental Health Act

Hospital orders

If you are convicted of a crime, the courts can send you to hospital instead of prison. The courts can do this under Section 37 of the Mental Health Act 1983, if you have a mental disorder and need hospital treatment. This factsheet looks at when and how the courts use this section. It explains what your rights are and what could happen after hospital. This information is for people who are 18 or over and affected by mental illness in England. It is also for their loved ones and carers and mental health professionals.

Key Points.

- The criminal courts can use section 37 of the Mental Health Act if they think you should be in hospital instead of prison. This is also called a 'hospital order'.
- You must have a mental disorder and need treatment in hospital. And have been convicted of a crime that is punishable with imprisonment.
- It is a sentence and does not have a fixed end date.
- You can appeal to the courts if you do not agree with this sentence. You need to appeal in a certain time period. You can get legal advice from a solicitor.
- When you are in hospital, you can also appeal to the hospital managers and the First-tier Tribunal.
- The hospital can give you treatment without your permission for up to 3 months.
- Your Responsible Clinician (RC), the hospital managers or tribunal can discharge you from this section.
- When you are discharged, you 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 detained under the Mental Health Act (MHA). We talk about some of these professionals in this factsheet.

- **Approved clinician (AC):** an AC is a mental health professional who can use the MHA. Doctors, psychologists, nurses, occupational therapists and social workers can be ACs. They are trained to assess your mental health.
- **Responsible clinician (RC):** the RC is an approved clinician with overall responsibility for your care and treatment. The RC also decides if you can leave hospital temporarily or permanently. The RC is usually a psychiatrist. But nurses, social workers, psychologists and occupational therapists can also be RCs.
- **Second opinion appointed doctor (SOAD):** a SOAD is an independent doctor who can make decisions about your treatment under the MHA. A SOAD is a consultant psychiatrist appointed by the Care Quality Commission (CQC). They decide if you should continue getting treatment. And if your views and rights have been considered.
- **Approved mental health professional (AMHP):** an AMHP is a mental health professional who is trained to use the Mental Health Act. They can be a social worker, psychologist, nurse or occupational therapist. They can be involved in bringing you to hospital under a section of the Mental Health Act.

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2. When do the courts use this section?

A criminal court might send you to hospital instead of prison under what is known as a 'hospital order'. They have the power to do this under section 37 of the Mental Health Act¹.

The courts will issue a hospital order if:²

- you have been convicted of a crime that is punishable with imprisonment,
- you have a mental disorder, and
- the court thinks you need to be in hospital for treatment instead of in prison.

A mental disorder can include, but is not limited to, mental illness. It can also cover things like brain injury.

In some cases, the courts can use this section without convicting you.³ The court may decide that you are too unwell to understand the pleas of guilty or not guilty. This is known as being unfit to plead. If so, they can use section 37 if they decide you did what you have been charged with.

If the court issues a hospital order, they cannot also give you:⁴

- a sentence of imprisonment,
- a fine, or
- a community order, a youth rehabilitation order, or a referral order.

If the court feels that you are a risk to the public because of the offence they could use section 37/41 of the Mental Health Act. This adds more restrictions onto the hospital order.⁵

You can find more information about '**Section 37/41 of the Mental Health Act – Hospital orders with a restriction**' 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.

3. How do the courts use this section?

The courts can use section 37 of the Mental Health Act if:⁶

- two doctors have assessed you,
- they think you need to be in hospital for treatment for a mental disorder, and
- the court thinks a hospital order is the most appropriate option.

Someone called an approved clinician must find you a hospital bed within 28 days.⁷ If they do not find you a bed in 28 days, you have to be assessed again.

You might have to wait in prison for a bed if there is none available. Some prisons have healthcare units where you might be able to stay.

The court might decide you need to be in a secure hospital. There are 3 main types of secure hospital. They are low, medium and high security.⁸

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4. How long will I be on this section?

On section 37 you will be in hospital:⁹

- for up to 6 months at first,
- for up to a further 6 months if your responsible clinician (RC) renews the order, and
- for 12 months at a time after that if your RC renews the order again.

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5. What are my rights?

Can I appeal the hospital order?

If you think you should not be in hospital you have the right to appeal to:

- the court,
- the Hospital Managers, and
- a tribunal.

How can I appeal to the court?

You can appeal the court's decision to give you a hospital order.

If the Magistrates' Court gave the hospital order you need to:^{10 11}

- appeal to the Crown Court, and
- do this within 21 days of the court making the order.

If the Crown Court made the hospital order, you need to:^{12 13}

- apply for permission to appeal, and
- do this within 28 days of the court making the order.

A judge will look at your application and decide whether to give you permission. If you get permission, your appeal will be heard by the Court of Appeal.

You can try to get legal advice before appealing.

You can find more information about '**Legal advice – How to get help from a solicitor**' 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.

How can I appeal to the Hospital Managers?

Any time while you are in hospital you can appeal to the Hospital Managers for discharge.¹⁴ They are also known as Mental Health Act Managers.

3 managers with mental health experience will look at your case. They will decide if you can be discharged. Or if you have to remain in hospital.¹⁵

How can I appeal to the tribunal?

The First-tier Tribunal is an independent panel that can discharge you from the Mental Health Act.¹⁶

The tribunal hearings usually take place at the hospital.¹⁷

The tribunal will decide if you can be discharged. Or if you have to remain in hospital.

You can appeal to a tribunal:¹⁸

- after the first six months of being in hospital, and
- every year after that.

You can find more information about '**Discharge from 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.

Can I see an independent mental health advocate?

You can get support from an independent mental health advocate (IMHA).¹⁹

An IMHA can help you to:²⁰

- be involved in decisions about your care and treatment, and
- understand your rights.

With your agreement, the IMHA can:²¹

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

Hospital staff should tell you about the IMHA service at your hospital or you can ask them about it.²²

You can find more information about '**Advocacy for mental health - Making your voice heard**' at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask for them to send you a copy of our factsheet.

What is a nearest relative?

The person known as your ‘nearest relative’ can help you protect your rights.

The ‘nearest relative’ is a legal term used in the Mental Health Act. It is not the same as your next of kin.

Your nearest relative has limited rights when you are on a hospital order compared to other Mental Health Act detentions.

Your nearest relative can apply to the tribunal to discharge you. They can do this in the period between 6 and 12 months after the making of the hospital order. They can also apply once in every following year.²³

You can find more information about **‘Nearest relative – Under 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. Please note that most of the information in the factsheet does not apply to patients on hospital orders.

Will I be given information about my rights?

As soon as possible after you are detained in hospital, you should be given information on:^{24,25}

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

You must be given this information:^{26,27}

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

You should be given details about your rights about staff physically restraining you.²⁸

Can I make a complaint about my care or treatment?

You have a right to complain if you are unhappy about your care or treatment. Or any other part of your detention.²⁹

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 ask a member of the hospital staff for a copy of the complaints policy.

You can complain to the Care Quality Commission (CQC) if you are unhappy with how staff have:³⁰

- carried out their duties under the Mental Health Act, or
- used their powers under the Act.

Their contact details are in the [Useful Contacts](#) section at the end of this factsheet.

You can find more information about '**Complaining 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.

Can I have visitors and contact people?

You generally have the right to:³¹

- see anyone you want to see,
- see your visitors in private, and
- contact people by phone or in writing.

You should be encouraged to have visitors. And visits should be made as easy and comfortable as possible for you and your visitors.³²

Sometimes your responsible clinician (RC) can stop a visitor seeing you. This is usually if your RC thinks your visitor will:³³

- have a bad effect on your wellbeing or mental health, or
- be disruptive and a risk to security.

If your RC stops a visitor from seeing you, they should explain their decision. They should do it verbally and in writing.³⁴

If your RC stops you having visitors without there being a good reason, it may be a breach of your human rights.³⁵

You can ask an independent mental health advocate to:

- explain your rights to you, and
- help you to appeal the RC's decision.

Can a child or young person visit me?

Children and young people can visit you. But only after professionals have considered their safety and whether it is in their best interests.³⁶

All hospitals should have policies about visits by children and young people. They should provide privacy while making sure children and young people are safe.³⁷

What are my rights about restraint?

Restraint means that staff can use force against you. Restraint can be used by hospital staff. It can be used when they are trying to stop you, or someone else, from getting hurt.³⁸

You have a right to only be restrained by professionals when:³⁹

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

You have a right to not be restrained:⁴⁰

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

Can I smoke?

Smoking can affect how some psychiatric medication works. So let staff know if you smoke.⁴¹

You cannot smoke on the ward. The government have made all hospitals smoke free zones.⁴²

Different hospitals and wards have their own rules about smoking and vaping on hospital grounds. You can ask staff for a copy of the hospital or the ward smoking policy.

In some places, you may be allowed to smoke or vape in an outside area. In other places, you may not be allowed to smoke or vape at all.⁴³

Health professionals may offer you:^{44,45}

- nicotine replacement therapy,
- e-cigarettes, or
- prescription medication to reduce your cravings for tobacco.

What is chaplaincy?⁴⁶

Chaplaincy is a service in the hospital that can provide you with pastoral, spiritual or religious support. You can get support off the service whether you are religious or not.

If you want support from the chaplaincy service, you can speak to a member of hospital staff.

What is observation?

If health professionals are concerned you are going to harm yourself, they may put you on observation. This means that staff will watch over you to make sure that you are safe.

For example, staff might check on you every hour or stay with you all the time.

What if I have problems with other patients?

If you have any problems with any of the other patients, you can tell a member of staff.

Can I be searched?

Staff might think there is a risk to the safety of you, other patients or staff. Or that you have something that is not allowed on the ward. They might ask you if they can search:

- you,
- your belongings, or
- or your room.

If staff search you, they must respect your dignity and privacy as much as they can. If they take something from you, they should tell you why they have done it.

The hospital should have a written policy on searches. And they should provide you with a copy if you ask for one.

When you are detained in hospital under the Mental Health Act, staff can search your things. Even if you do not consent. But if they do, they should:

- ask you first,⁴⁷
- ask your doctor to see if there is any reason why you cannot be searched,⁴⁸ and
- give you a good reason why they need to do the search.⁴⁹

Some of the reasons staff might want to search you are:⁵⁰

- they think you have brought things onto the ward you should not have,
- you have had drugs on the ward before,
- you have self-harmed on the ward with something you hid, or
- you sometimes do not take your medication and hide it.

If the staff take any of your items, they must:⁵¹

- tell you why they took it,
- tell you where they will keep it,
- tell you when they will give it back, and
- give you a receipt.

Can my visitors be searched?

The hospital staff might want to search a visitor.⁵²

If your visitor does not want to be searched, they cannot be forced. But they might not be able to see you, or the visit may be supervised. This depends on the hospital's security policies.

Can I get welfare benefits?

You are still entitled to claim some welfare benefits. You have the same right to claim benefits as any other hospital patient.

You can find more information about '**How do I manage my money if I have to go into hospital?**' at www.mentalhealthandmoneyadvice.org/en/.

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/our-work/our-research/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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6. Can I be given treatment if I do not consent to it?

Doctors will assess you and think about what treatment is right for you. They will try to get to you to agree to treatment.

But doctors can treat you even if you do not want it:⁵³

- for 3 months, and
- after that only once they have got a second opinion from a doctor called a SOAD.

A SOAD is a second opinion appointed doctor. They are an independent doctor appointed by the Care Quality Commission (CQC). If the SOAD agrees you need the recommended treatment, this can be given to you. Even if you do not want it.⁵⁴

What about Electroconvulsive therapy (ECT)?

Doctors cannot give you electroconvulsive therapy (ECT) unless:^{55 56}

- you agree,
- you lack mental capacity and a SOAD agrees that you need it, or
- it is an emergency.

You can find more information about '**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.

What can I do if I am unhappy about my treatment?

If you are unhappy about your treatment you can try the following.

- Speak to your responsible clinician. They are the approved clinician in overall charge of your care. They are usually a psychiatrist.
- Speak to your named nurse.
- Speak to an independent mental health advocate (IMHA). They can help raise any issues you have about your care and treatment.
Please see [Section 4](#) of this factsheet for more information about IMHAs.
- Make a complaint.

You can find more information about '**Complaining about the NHS and 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.

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7. Who can discharge me and what might happen?

You can be discharged from Section 37 by:

- your responsible clinician (RC),
- the hospital managers,
- a tribunal, or
- your nearest relative.

Please see [Section 4](#) of this factsheet for more information on discharge by the hospital managers, the tribunal or your nearest relative.

What is a community treatment order (CTO)?

Your RC might think you need to be on a CTO.

A CTO is when you live in the community but you remain under the Mental Health Act.^{57 58}

Under a CTO you must agree to certain conditions.⁵⁹ This could include you getting medical treatment or taking certain medication. Your RC should make any conditions clear to you.

You cannot be treated without your permission on a CTO.⁶⁰

A CTO means that your RC can order you back to hospital if they feel:⁶¹

- you need treatment in hospital again, and

- there is a risk of harm to you or other people if you are not taken back to a hospital, or
- if you have not kept to your conditions.

You can find more information about '**Community treatment orders (CTOs) – Made under the Mental Health Act 1983**' 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.

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8. What sort of aftercare could I get?

When you leave hospital, the NHS and social services must provide you with free aftercare services if you need them. 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, social care or other services.

You can find more information about '**Section 117 aftercare – Under the Mental Health Act 1983**' 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.

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9. When will my hospital order become 'spent'?⁶⁴

Sometimes you must tell people about criminal convictions. For example, when you apply for a job.

But once you are discharged from a hospital order you do not have to tell potential employers or anyone else about it.

The hospital order becomes what is known as 'spent' as soon as you are discharged from it.

You can find more information about '**Criminal convictions – When and how to tell others**' 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.

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Broken links?

All links to other pages on our website, and other websites, worked when we last reviewed this factsheet. If you notice that any links no longer work, you can help us by emailing us at feedback@rethink.org and we will fix them. Many thanks.

Incorrect information?

All the information in this factsheet was correct, to the best of our knowledge, when we published it. If you think any information is incorrect you can help us by emailing us at feedback@rethink.org. Many thanks.

Useful Contacts

Care Quality Commission (CQC)

They investigate complaints about how professionals use their powers and carry out their duties under the Mental Health Act.

Phone: 03000 616 161 (option 1)

Address: CQC Mental Health Act, Citygate, Gallowgate, Newcastle-upon-Tyne, NE1 4PA

Website: www.cqc.org.uk/contact-us/how-complain/complain-about-use-mental-health-act

References

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² s1-s2, Mental Health Act 1983 c.20.

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⁴ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015. Paragraph 15.7.

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¹⁰ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015. Paragraph 15.21

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²¹ s130B Mental Health Act 1983 c.20.

²² s130D Mental Health Act 1983 c.20.

²³ Department of Health. *Reference guide to The Mental Health Act 1983*. London: TSO; 2015. para 2.2, Figure 5, Page 23.

²⁴ s132(1) Mental Health Act 1983 c.20.

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²⁷ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. Paragraph 4.10.

²⁸ s4(3), Mental health units (force of use) Act 2018 c27.

²⁹ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. Paragraph 4.53.

³⁰ Care Quality Commission (CQC). *Complaining about the use of the Mental Health Act*. Newcastle upon Tyne: CQC; October 2012. Page 2.

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⁴⁴ Care Quality Commission. *Brief guide: Smokefree policies in mental health inpatient services*. Pages 3-4. www.cqc.org.uk/sites/default/files/2024

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⁴⁶ NHS England. *NHS chaplaincy guidelines*. Point 1.1. www.england.nhs.uk/wp-content/uploads/2015/03/nhs-chaplaincy-guidelines-2015.pdf (accessed 6th September 2024).

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⁴⁸ Department of Health. *Mental Health Act 1983: Code of Practice*. London: The Stationery Office; 2015. Para 8.40.

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⁵¹ Department of Health. *Mental Health Act 1983: Code of Practice*. London: The Stationery Office; 2015, para 8.45.

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⁵⁷ s17(A), Mental Health Act 1983 c.20.

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This factsheet is available in large print.

Rethink Mental Illness Advice Service

Phone 0808 801 0525

**Monday to Friday, 9:30am to 4pm
(excluding bank holidays)**

Email: a@rethink.org

Did this help?

We'd love to know if this information helped you

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or write to us at Rethink Mental Illness:

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Don't have access to the web?

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Need to talk to an adviser?

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