

## Section 35 of the Mental Health Act

### Courts send you to hospital for a medical report

This factsheet looks at section 35 of the Mental Health Act. It looks at the professionals you might come across in hospital, and when and how courts use this section. It explains what your rights are if you are sent to hospital under this section, and what could happen afterwards. 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 Mental Health Act is a law. Mental health professionals use it to detain you in hospital for assessment, treatment or both. If you are detained under the Act, it is sometimes known as being 'sectioned'.
- The criminal courts can send you to hospital for an assessment using section 35 of the Mental Health Act. They can do this if they want more information about your mental health.
- They can do this at any point during your court case.
- A medical professional will write a report about your mental health. They will recommend what the court should do.
- You will only be in hospital up to 28 days. But this can be extended up to a maximum of 12 weeks.
- The court might think the report can be done in prison. They can send you there instead of hospital.
- Hospital staff cannot treat you against your will if you are on section 35.
- Section 35 can only be used if you can be sent to prison for the offence you have been charged with.

## **This factsheet covers:**

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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. We talk about some of these professionals in this factsheet.

**Approved clinician (AC):** an AC is a mental health professional who can assess or treat you under the Mental Health Act. Doctors, psychologists, nurses, occupational therapists, and social workers can be ACs. They are trained to assess you for mental illness.

**Responsible clinician (RC):** the RC is responsible for your overall care or treatment in hospital. The RC decides if you can leave hospital. They can renew your section. This will be based on information from different healthcare professionals who have worked with you. An RC is an approved clinician with more training. RCs are usually psychiatrists.

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### **2. When might the courts use this section?**

The magistrates' court or Crown Court might think you have a mental disorder. They can send you to hospital to get a medical report for more information on your mental condition.<sup>1</sup>

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

The magistrates' court can use this section if you have been convicted of a crime.<sup>2</sup>

The Crown Court can use this section at any time in your court case.<sup>3</sup>

Section 35 can only be used if you can be sent to prison for the offence you have been charged with.<sup>4</sup>

In hospital an approved clinician (AC) writes the report.<sup>5</sup> They should assess you. They will give the court their opinion about your mental health.

### **What should be in the report?**

In the report the approved clinician (AC) should:<sup>6</sup>

- give their opinion of what type of sentence is the most suitable for you,
- say how your mental disorder might affect the risk that you have to yourself and others,
- give their view on your fitness to plead, and
- give their view on the part your mental disorder might play in your risk of reoffending.

The AC may think you should stay in hospital under the Mental Health Act for further assessment or treatment. Or that you need further support in court because of your mental health.

### **How quickly should I go to hospital? <sup>7</sup>**

If the approved clinician thinks you need go to hospital, they need to find a hospital bed for you.

They need to make sure that you can be admitted within 7 days of their decision. The court must be happy this can be done within the timescale.

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## **3. How can this section be used?**

The court will decide if they need a report on your mental condition.

They might think that it is not practicable for the report to be made if you on bail in the community. If this is the case, they will send you to hospital under section 35, so the report can be made.<sup>8</sup>

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## **4. How long will I be on this section?**

The approved clinician can keep you in hospital for up to 28 days while they do the report.<sup>9</sup>

They need more time to complete the report. If they do, the court can extend the section up to 12 weeks at the most.<sup>10</sup>

## 5. What are my rights?

### Can I appeal to the tribunal?

You cannot appeal to the Mental Health Tribunal if you are detained in hospital under section 35.<sup>11</sup>

But you can pay for an independent doctor to assess you. The independent doctor might think you do not need to be in hospital under section 35. You can apply to the court, and they might agree to end your stay in hospital under section 35.<sup>12</sup>

You can ask the court to remand you to prison or to put you on bail instead. The court will decide what to do.<sup>13</sup>

You can speak to a member of hospital staff, an advocate, or your solicitor for advice.

You can find more information about '**Legal advice - How to get help from a solicitor**' at [www.rethink.org](http://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.

### Can I see an independent mental health advocate?

You can get support from an independent mental health advocate (IMHA).<sup>14</sup>

An IMHA can help you to:<sup>15</sup>

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

With your agreement, the IMHA can:<sup>16</sup>

- 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.<sup>17</sup>

You can find more information about '**Advocacy for mental health - Making your voice heard**' at [www.rethink.org](http://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.

## Will I be given information about my rights?

As soon as possible after you are detained in hospital you should be given information on:<sup>18,19</sup>

- 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:<sup>20,21</sup>

- 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.<sup>22</sup>

## 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 aspect of your detention.<sup>23</sup>

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're unhappy with how staff have:<sup>24</sup>

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

Their contact details are:

### 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](http://www.cqc.org.uk/contact-us/how-complain/complain-about-use-mental-health-act)

You can find more information about '**Complaints about the NHS or social services**' at [www.rethink.org](http://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:<sup>25</sup>

- 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.<sup>26</sup>

Sometimes your responsible clinician (RC) can stop a visitor seeing you. This is usually if your RC thinks your visitor will:<sup>27</sup>

- 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:<sup>28</sup>

- verbally, and
- in writing.

If your RC stops you having visitors without there being a good reason, it may be a breach of your human rights.<sup>29</sup>

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.<sup>30</sup>

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.<sup>31</sup>

### **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.<sup>32</sup>

You have a right to only be restrained by professionals when:<sup>33</sup>

- 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:<sup>34</sup>

- 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.<sup>35</sup>

You cannot smoke on the ward. The government have made all hospitals smoke free zones.<sup>36</sup>

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.<sup>37</sup>

Health professionals may offer you: <sup>38,39</sup>

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

### What is chaplaincy?<sup>40</sup>

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're 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's 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're detained in hospital under the Mental Health Act, staff can search your things, even if you don't consent. But if they do, they should:

- ask you first,<sup>41</sup>
- ask your doctor to see if there is any reason why you cannot be searched,<sup>42</sup> and
- give you a good reason why they need to do the search.<sup>43</sup>

You should only be searched if staff have a good reason to do it. Some of the reasons staff might want to search you are:<sup>44</sup>

- they think you've brought things onto the ward you shouldn't have,
- you've had drugs on the ward before,
- you've 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: <sup>45</sup>

- 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.<sup>46</sup>

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.rethink.org/advice-and-information/living-with-mental-illness/money-benefits-and-mental-health](http://www.rethink.org/advice-and-information/living-with-mental-illness/money-benefits-and-mental-health)

### **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](http://www.equalityhumanrights.com/our-work/our-research/your-rights-when-detained-under-mental-health-act-england)

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## **6. Can I be forced to have treatment if I do not want it?**

Doctors need your permission to give you treatment if you are on a section 35.

They might be able to give you treatment without your consent if you lack mental capacity. But only if it is in your best interests.<sup>47</sup>

If you lack mental capacity, it means you are not able to make decisions for yourself.

You may be under 'dual detention'. This means you may be on 2 sections. You could be under a section 2, as well as the section 35.

You can be under dual detention if there is a delay in your court date. But your doctors think you need treatment. If this is the case, they can treat you without your permission.<sup>48</sup>

You can find more information about:

- Mental Health Act, and
- Mental capacity and mental illness - The Mental Capacity Act 2005

at [www.rethink.org](http://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.

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## 7. Will I have to go back to court?

The court might need to extend your section 35 to allow doctors to finish the medical report.

If you have a solicitor to represent you, you do not need to go to court for the hearing if you do not want to. If you do not have a solicitor, you will need to go to court.<sup>49</sup>

You will need to go back to court when the section ends, so the court can decide the next steps.

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## 8. What might happen after this section?

After your section 35 ends 2 things could happen.

- Your responsible clinician (RC) says that you do not need to be in hospital. This means that your court case will carry on.
- Your RC says that you still need to be in hospital. This means that you will then be detained under section 36 or 37.

You can find more information about:

- Section 36 of the Mental Health Act - When the Crown Court sends you to hospital for treatment, and
- Section 37 of the Mental Health Act - Hospital orders

at [www.rethink.org](http://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.

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### Further Reading

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](http://www.equalityhumanrights.com/our-work/our-research/your-rights-when-detained-under-mental-health-act-england)

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All links to other pages on our website, and other websites, worked when we last reviewed this page. If you notice that any links no longer work, you can help us by emailing us at [feedback@rethink.org](mailto: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](mailto:feedback@rethink.org). Many thanks.

## References

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- <sup>2</sup> s35 (2)(b), Mental Health Act 1983 c20.
- <sup>3</sup> s35 (2)(a), Mental Health Act 1983 c20.
- <sup>4</sup> s35 (2)(b), Mental Health Act 1983 c20.
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- <sup>9</sup> s35(7), Mental Health Act 1983 c20.
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- <sup>15</sup> s130B Mental Health Act 1983 c.20.
- <sup>16</sup> s130B Mental Health Act 1983 c.20.
- <sup>17</sup> s130D Mental Health Act 1983 c.20.
- <sup>18</sup> s132(1) Mental Health Act 1983 c.20.
- <sup>19</sup> Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. Paragraph 4.12.
- <sup>20</sup> s132(3) Mental Health Act 1983 c.20.
- <sup>21</sup> Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. Paragraph 4.10.
- <sup>22</sup> s4(3), Mental health units (force of use) Act 2018 c27.
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- <sup>26</sup> Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. Paragraph 11.5.
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- <sup>40</sup> NHS England. *NHS chaplaincy guidelines*. Point 1.1. <https://www.england.nhs.uk/wp-content/uploads/2015/03/nhs-chaplaincy-guidelines-2015.pdf> (accessed 24 May 22)
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Last updated: March 2024 Next update: March 2027

Version: 6

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### Need to talk to an adviser?

If you need practical advice, call us on: 0808 801 0525 between 9:30am to 4pm, Monday to Friday. Our specialist advisers can help you with queries like how to apply for benefits, get access to care or make a complaint.

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