

Section 37/41 of the Mental Health Act

Hospital orders with a restriction

This factsheet looks when Crown Courts issue hospital orders with a restriction. They do this under section 37/41 of the Mental Health Act. It looks at the professionals you might come across in hospital, and when and how the courts use this section. It explains what your rights are in hospital. This information is for anyone detained under this section of the Mental Health Act in England. And also, their friends and relatives and anyone interested in the subject.

Key Points.

- If you've been found you guilty of a crime you can go to prison for, courts can send you to hospital instead. They can do this by issuing a hospital order under section 37 of the Mental Health Act.
- If a Crown Court think you're a risk to the public, they can add a restriction to the hospital order. They can do this under section 41 of the Mental Health Act.
- The restriction means that you can only be discharged from hospital if the Secretary of State for Justice agrees.
- You can appeal to the Court of Appeal if you don't agree with the sentence of the restricted hospital order. You need to appeal within a certain time frame.
- If you think you should be discharged from hospital, you can appeal to a tribunal and the hospital managers.
- You can be given treatment without your consent for the first 3 months. You can then only be treated without your consent if a second doctor agrees.
- When you're discharged from hospital, you can get free aftercare under section 117 of the Mental Health Act.

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A list of professionals we mention in this factsheet

There are different professionals that might be involved in your care while you are in hospital under the Mental Health Act. We talk about the following 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 your mental health.

Responsible clinician (RC): your RC is responsible for your care or treatment. They decide if you can leave hospital and they can renew your hospital order. A RC is an AC 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 they look at whether your views and rights have been considered.

Secretary of State for Justice: The Ministry of Justice carry out the duties of the Secretary of State that relate to people under restricted hospital orders.¹ Your responsible clinician needs to get permission from them before letting you leave hospital.

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1. When do the courts issue hospital orders?

If you've been found guilty of a crime you can go to prison for, courts can send you to hospital instead. They can do this by issuing a hospital order under section 37 of the Mental Health Act.

Criminal courts issue hospital orders under section 37 when:²

- you have a mental disorder that needs treatment in hospital, and
- It's the best thing for you, given the circumstances of your case.

A mental disorder can include mental illness and personality disorders, amongst other things.

Courts can issue a hospital order under section 37 in the following situations.

- You have been found guilty of a crime you can go to prison for. This is also called being 'convicted'.³
- The court agrees you did the act you are accused of but decides not to convict you.⁴
- The court agrees you did the act you are accused of, but thinks you are too unwell to understand the pleas of 'guilty' or 'not guilty'. This is known as being unfit to plead.⁵

What is a restriction under section 41 of the Mental Health Act?

If a Crown Court think you're a risk to the public, they can add a restriction to the hospital order. They can do this under section 41 of the Mental Health Act.⁶

The restriction means that the Ministry of Justice must agree before:

- you're discharged from hospital,⁷
- you're granted leave from hospital,⁸ or
- your RC transfers you to another hospital or facility.⁹

You can find more information about '**Section 37 – Hospital orders**' without a restriction order, 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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2. How do the courts issue hospital orders?

Before the courts issue a hospital order under section 37, 2 doctors need to assess you. They must agree that you have a mental disorder which means you should be in hospital.¹⁰ One of these doctors should be from the hospital where you will be staying.¹¹

As we said in [section 1](#), a Crown Court judge can add a restriction to your hospital order. But before they do, one of the doctors who assessed you must speak in court. This is to give evidence about your condition.¹²

The managers of the hospital should find you a bed within 28 days.¹³ If they don't, they must do the assessment again.¹⁴

You might have to wait in prison until a bed is available. Some prisons have healthcare units where you could stay.

You will stay in a secure hospital. There are 3 types of secure hospitals:¹⁵

- low,
- medium, or
- high security.

The judge will decide what level of security you need.

You can find more information about '**Mental health care 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.

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3. How long will I be in hospital?

Since 2007, a restricted hospital order doesn't have a time limit. This means the hospital order doesn't have a fixed end date and doesn't need to be renewed.¹⁶

Your responsible clinician will decide when you're well enough to leave hospital. The Ministry of Justice must agree for you to be discharged.

You can appeal your detention in hospital. There is more information about this in [section 4](#) of this factsheet.

When you leave hospital, you might get a conditional or an absolute discharge.

If you're given a conditional discharge, you will have to stick to certain conditions to stay in the community. If you break these conditions, you may have to go back to hospital.¹⁷ If this happens the Ministry of Justice must refer your case to the tribunal within one month.¹⁸

You can apply for absolute discharge if things go well in the community. This means you would not need to meet the conditions anymore. You can apply to the tribunal for absolute discharge one year after your conditional discharge. If you aren't successful, you can then apply every 2 years after that.¹⁹

If you get a conditional discharge, you can still get free legal help through the legal aid scheme to apply to the tribunal.

If you were given a restricted hospital order under section 37/41 before 2007, it may have a time limit.

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4. What are my rights?

Who can give me advice about my rights and support?

You have the right to see an independent mental health advocate (IMHA.) You can do this if you want information, or you're unhappy about your care and treatment.

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**' 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 information should I be given?

As soon as possible after you are detained in hospital you should be given information on:^{23,24}

- how the Mental Health Act applies to you,
- your right to appeal to the tribunal,
- 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:^{25,26}

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

Can I appeal my hospital order?

You can appeal to:

- the Court of Appeal,
- the hospital managers, and
- the First-tier Tribunal.

How can I appeal to the Court of Appeal?

You can appeal to the Court of Appeal if you think you shouldn't have been given you a restricted hospital order.²⁷ You must do this within 28 days of the court making the order.²⁸

It is important to get legal advice before you appeal. Your solicitor will be able to help.

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.²⁹ 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 must remain in hospital.³⁰ But they can only do this if the Secretary of State for Justice agrees.³¹

You can speak to an independent mental health advocate about appealing to the hospital managers.

Can I appeal to a Tribunal?

You can appeal to a First-tier Tribunal after you have been in hospital for 6 months. And then once every year after that.³²

The Tribunal can give you an absolute or a conditional discharge.³³

If you are given a conditional discharge, you will have to stick to certain conditions to stay in the community. The Ministry of Justice can change the conditions of your discharge.³⁴ A conditional discharge is different from what is known as a Community Treatment Order (CTO).

The Ministry of Justice doesn't have to approve an absolute discharge.³⁵

You can ask hospital staff for a list of mental health solicitors who will be able to help you to appeal to the Tribunal. People in hospital under the Mental Health Act get legal aid to pay for solicitors for Tribunals.³⁶

You can speak to an independent mental health advocate about appealing to the Tribunal.

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.

Can I make a complaint about my care or treatment?

You have a right to complain if you are unhappy about your care, treatment, or any other aspect of your detention.³⁷

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:³⁸

- 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 of this factsheet.

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.

Can I have visitors and contact people?

You generally have the right to:³⁹

- 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.⁴⁰

Sometimes your responsible clinician (RC) can stop a visitor seeing you. This is usually if your RC thinks your visitor will:⁴¹

- 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.⁴²

- 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.⁴³

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's in their best interests.⁴⁴

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.⁴⁵

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.⁴⁶

You have a right to only be restrained by professionals when:⁴⁷

- 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:⁴⁸

- 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.⁴⁹

You can't smoke on the ward. The government have made all hospitals smoke free zones.⁵⁰

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.⁵¹

Health professionals may offer you:^{52,53}

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

What is chaplaincy?⁵⁴

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're going to harm yourself, they may put you on observation. This means that staff will watch over you to make sure that you're 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's 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,⁵⁵
- ask your doctor to see if there is any reason why you can't be searched,⁵⁶ and
- give you a good reason why they need to do the search.⁵⁷

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:⁵⁸

- 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 don't take your medication and hide it.

If the staff take any of your items, they must:⁵⁹

- 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.⁶⁰

If your visitor doesn't want to be searched, they can't 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.

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.

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5. Can I be given treatment if I don't want it?

In the first 3 months of your detention in hospital you can be given treatment, even if you don't want it.^{61,62}

During this time, staff should still involve you in decisions about your treatment.⁶³ But they can continue to treat you if you:

- refuse the treatment, or
- don't have the mental capacity to give your consent.

After 3 months, your responsible clinician (RC) must get permission from an independent doctor to treat you without your consent. The doctor is called a second opinion appointed doctor (SOAD). The treatment will only continue if the SOAD agrees you should have it.⁶⁴

Before they make their decision, the SOAD should visit you.⁶⁵

What about electroconvulsive therapy (ECT)?

Some treatments can't be given to you without your consent, even if a SOAD agrees. This includes electroconvulsive therapy (ECT).⁶⁶ But if you're in hospital under the Mental Health Act you can have ECT without your consent if:⁶⁷

- there is a real risk to your life,
- to stop you from becoming seriously unwell, or
- to stop you becoming seriously unwell and a risk to yourself or others.

What if I don't have mental capacity?

If you don't have the mental capacity to consent to ECT, your RC can use it if a SOAD agrees that it's in your best interests.

But your RC can't give you ECT if you have made an advance decision saying that you don't want ECT.⁶⁸ An advance decision is a document you write when you have the mental capacity to refuse specific medical treatments in the future.⁶⁹

You should speak to your nurse or RC if you're unhappy with your treatment.

Who can help me to understand my rights about care and treatment?

You can speak to an independent mental health advocate (IMHA). They can help you to raise any issues you have with your care and treatment.

You can find more information about:

- Advocacy
- Electroconvulsive therapy (ECT)
- Mental capacity and mental illness
- Planning your future care - Advance statements and advance decisions

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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6. Can I claim 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

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7. What sort of aftercare can I get?

The NHS and social services must give you free aftercare when you leave hospital after being on a restricted hospital order. Section 117 of the Mental Health Act says they must do this.

Aftercare can mean anything that:⁷⁰

- meets a need you have because of the mental health condition that caused you to be detained, and
- reduces the risk that your condition will deteriorate.

It can include things like social care, supported housing, and treatment.

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.

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8. Do I have to tell employers about my hospital order?

Sometimes you must tell people about criminal convictions. For example, when you apply for a job. But you usually don't have to tell anyone once your conviction is 'spent'.

A restricted hospital order becomes spent as soon as you are fully discharged from it.⁷¹

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.

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

- Complaints about court
- Criminal courts and mental health
- Mental Health Act
- Legal Advice – How to get help from a solicitor
- Section 37 of the Mental Health Act – Hospital orders

Further
Reading

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

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.

Telephone: 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

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Rethink Mental Illness Advice Service

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