

Section 36 of the Mental Health Act

When the Crown Court sends you to hospital for treatment

A Crown Court can send you to hospital for treatment at any time during your court case, if necessary. They can do this under section 36 of the Mental Health Act 1983. This factsheet looks at when and how courts use this power. 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 anyone interested in this subject.

Key Points.

- The Mental Health Act 1983 is the law that mental health professionals use to detain you in hospital for assessment and treatment. This is also known as being 'sectioned'.
- The Crown Court can use section 36 of the Act if they think you should be in hospital for treatment for a mental disorder.
- They can use this section at any point during your court case.
- The hospital can treat you without your consent, if necessary.
- At the end of your time in hospital, you will need to return to the court so your case can continue.
- You can apply to the court to end your detention in hospital under section 36. You can get an independent medical report to help with this. But you must pay for the report yourself.

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 detained under the Mental Health Act. We talk about some of these professionals in this factsheet.

Approved clinician: an AC is a mental health professional who is allowed to use the Mental Health Act. They can be a doctor, psychologist, nurse, occupational therapist or social worker. They are trained to assess your mental health.

Responsible clinician (RC): the RC is responsible for your care or treatment. A RC is an approved clinician with more training. They are 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. They decide if you should continue getting treatment and if your views and rights have been taken into account.

2. When can the courts use this section?

A Crown Court can use section 36 of the Mental Health Act to detain you in hospital if:¹

- you are awaiting trial, or on trial, in custody for an offence punishable with imprisonment, and
- they think you have a mental disorder, and you need treatment.

You might also hear this called ‘being remanded to hospital’.

A court may do this instead of remanding you in custody in prison.

The only time Section 36 cannot be used are for offences where the length of punishment is fixed in law.² A punishment fixed in law means the penalty for a crime is set by law and cannot be changed by the judge.

The court can use section 36 at any point during your court case. For example, they can do this when:³

- you are waiting for your trial to start, or
- when you are waiting for the court to sentence you.

Section 36 is not used if you have already received a sentence for a crime you have been convicted of. The court can instead send you to hospital under Section 37 of the Mental Health Act. This can be used if they feel you are too unwell to go prison.⁴

You can find more information about **Section 37 of the Mental Health Act – Hospital orders** at www.rethink.org. Or call us on 0121 522 7007 and ask us to send you a copy.

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3. How do the courts use this section?

2 approved clinicians need to assess you. They need to agree and tell the court that:⁵

- you have a mental disorder,
- you need treatment for it in hospital, and
- that appropriate treatment is available.

The court must also be sure that arrangements have been made for you to go into hospital.

You should be admitted to hospital within 7 days of the decision to use Section 36.⁶

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4. How long will I be in hospital?

Doctors can keep you in hospital for 28 days.⁷

Your responsible clinician (RC) will update the court after this time.⁸ Your RC is the person responsible for your overall care in hospital.

The RC will tell the court if they think you should stay in hospital longer.⁹

The court can extend your stay for further 28-day periods, up to 12 weeks at the most.¹⁰

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5. What are my rights?

What is an independent mental health advocate?

You can get support from an independent mental health advocate (IMHA).¹¹

An IMHA can help you understand:¹²

- your rights under the Mental Health Act (MHA),
- the rights that other people have, such as your family,
- any conditions or restrictions which affect you, or
- any medical treatment you are receiving and the reasons for that treatment.

With your agreement an IMHA can do the following.

- Meet with you in private.
- Look at your health records.
- Speak to the people treating you.
- Represent you. They can speak or write for you.
- Go with you to meetings about your treatment and care.

Hospital staff, including your responsible clinician (RC), should tell you about the IMHA service at your hospital.

You can find more information about **Advocacy for mental health – Making your voice heard** at www.rethink.org. Or call us on 0121 522 7007 and ask us to send you a copy.

Can I apply to the court to end my detention in hospital?

You might not want to be detained in hospital if you feel that you are not unwell.

You can apply to the court to end your detention in hospital under section 36.¹³

You have the right to get your own medical report done to help you with this. But you must pay for the report yourself.¹⁴

In some cases you could pay for the report through Legal Aid.¹⁵ You can speak to a member of hospital staff, an advocate or your solicitor for advice.

An application to the Court might lead to you:

- being placed on remand in prison, or
- being released on bail.

Being on remand means you will stay in prison while you wait for your trial.¹⁶ Being on bail means the court will let you live in the community. But you must agree to conditions, such as living at a certain address.¹⁷

Will I be given information about my rights?

As soon as possible after you are detained in hospital, you should be given information on:^{18,19}

- 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:^{20,21}

- 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.²²

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.²³

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:²⁴

- 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 us on 0121 522 7007 and ask us to send you a copy.

Can I have visitors and contact people?

You generally have the right to:²⁵

- 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.²⁶

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

- 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.²⁸

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

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 thought about their safety and whether it is in their best interests.³⁰

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.³¹

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, or to treat you.^{32,33}

You should only be restrained by professionals when:³⁴

- 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 should not be restrained:³⁵

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

The hospital must have a policy that gives clear guidelines on how staff can restrain patients, and in what circumstances. You can ask to see this policy.³⁶

All staff working on wards should be trained on how to safely restrain patients.³⁷

Can I smoke or vape?

Smoking can affect how some psychiatric medication works. So let staff know if you smoke.³⁸

You cannot smoke on the ward. The government have made all hospitals smoke free zones.³⁹

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.⁴⁰

Health professionals may offer you:^{41,42}

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

What is chaplaincy?⁴³

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.⁴⁴ If they take something from you, they should tell you why they have done it.⁴⁵

The hospital should have a written policy on searches. And they should provide you with a copy if you ask for one.⁴⁶

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 treated without my consent?

Doctors should ask you if you consent to their recommended treatment, if appropriate.⁵³ But if you do not consent to treatment doctors can treat you for up to 3 months against your will.⁵⁴

Your responsible clinician (RC) will tell you about any treatment that they recommend and answer any questions you have. The RC is the person in charge of your treatment in hospital.

Doctors cannot usually give you electroconvulsive therapy (ECT) unless you agree to it.⁵⁵

You can find more information about **Electroconvulsive therapy (ECT)** at www.rethink.org. Or call us on 0121 522 7007 and ask us to send you a copy.

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

If you are unhappy about your treatment you can:

- Speak to your named nurse or psychiatrist and explain why.
- Get support from an independent mental health advocate (IMHA). They can help you to raise any issues you have about your care and treatment.
- Make a complaint.
- Contact the hospital's PALS service about the issue. PALS ensure that the NHS listens to patients, their relatives, carers and friends. PALS answer questions and resolves concerns as quickly as possible. You can search for the local PALS service at: www.nhs.uk/service-search/other-health-services/patient-advice-and-liaison-services-pals

You can find more information about:

- Advocacy for mental health – Making your voice heard
- Complaints about the NHS or social services.

at www.rethink.org. Or call us on 0121 522 7007 and ask us to send you a copy.

7. Will I have to go back to court?

You will need to go back to court:

- when your detention in hospital ends, so your court case can continue, or
- if your section 36 hospital detention is being extended. But if you have a solicitor to represent you, you do not need to attend the court hearing for the extension.⁵⁶

8. What will happen after I have been treated in hospital under section 36?

After your detention in hospital under section 36, you will continue to go through the court process.⁵⁷

The court will decide when you no longer need to be in hospital. Usually on the recommendation of your responsible clinician.⁵⁸

You can find more information about:

- Criminal courts and mental health
- Section 37 of the Mental Health Act – Hospital orders

at www.rethink.org. Or call us on 0121 522 7007 and ask us to send you a copy.

Did this help?

We would love to know if this information helped you or if you found any issues with this page. You can email us at feedback@rethink.org

Further Reading

The Mental Health Act 1983

You can read Section 36 of the Mental Health Act at the following website. Website: www.legislation.gov.uk/ukpga/1983/20/section/36

The Equality and Human Rights Commission - Your rights when detained under the Mental Health Act in England

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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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)

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

References

¹ s36(1)(a), Mental Health Act 1983 c20.

² s36 (2), Mental Health Act 1983 c20.

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⁴ s37, Mental Health Act 1983 c20.

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⁶ s36(3), Mental Health Act 1983 c20.

⁷ s36(6), Mental Health Act 1983 c20.

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¹⁵ Department of Health. *Mental Health Act 1983: Code of Practice*. London: TSO; 2015. Para 22.16.

¹⁶ Gov.UK. *Remand*. <https://www.gov.uk/charged-crime/remand> (accessed 19th February 2025).

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²² s4(3), Mental Health Units (Force of Use) Act 2018 c27.

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- ²⁵ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. Paragraph 11.4.
- ²⁶ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. Paragraph 11.5.
- ²⁷ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. Paragraphs 11.4-11.15.
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- ³⁰ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015.. Paragraph 11.20
- ³¹ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. Paragraph 11.19
- ³² Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. At para 26.36.
- ³³ The Equality and Human Rights Commission. *Your rights when detained under the Mental Health Act in England – Forensic Sections Full Guide. Can I be restrained?* Page 79. www.equalityhumanrights.com/our-work/our-research/your-rights-when-detained-under-mental-health-act-england (accessed 24th February 2025).
- ³⁴ Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO; 2015. At paras 26.37 26.41
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- ³⁶ The Equality and Human Rights Commission. *Your rights when detained under the Mental Health Act in England – Forensic Sections Full Guide. Can I be restrained?* Pages 81-82. www.equalityhumanrights.com/our-work/our-research/your-rights-when-detained-under-mental-health-act-england (accessed 24th February 2025).
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- ⁵⁰ Department of Health. *Mental Health Act 1983: Code of Practice*. London: The Stationery Office; 2015, para 8.30.
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- ⁵⁴ S58(1), Mental Health Act 1983 c20.
- ⁵⁵ s58A(3), Mental Health Act 1983 c20.
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www.cygnethealth.co.uk/service-users-carers/mental-health-act/section-36/ (accessed 24th February 2025).
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This factsheet is available in large print.

Rethink Mental Illness Advice Service

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

Email advice@rethink.org

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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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