

Section 37 of The Mental Health Act

Act

Hospital orders

If you are convicted of a crime, the courts can send you to hospital instead of prison. Under Section 37 of the Mental Health Act 1983 the courts can do this 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 factsheet is for anyone affected by, or interested in, section 37 of the Mental Health Act.

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 doesn't have a fixed end date.
- You can appeal to the courts if you don't 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 (FTT).
- 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.

This factsheet covers:

1. [What professionals might I come across in hospital?](#)
2. [When do the courts use this section?](#)
3. [How do the courts use this section?](#)
4. [How long will I be on this section?](#)
5. [What are my rights?](#)
6. [Can I be given treatment if I don't consent to it?](#)
7. [Can I claim welfare benefits?](#)
8. [Who can discharge me and what might happen?](#)
9. [What sort of aftercare could I get?](#)
10. [When will my hospital order become 'spent'?](#)

[Top](#)

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 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): 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 RC's.

Second opinion appointed doctor (SOAD): a SOAD is an independent doctor who can make decisions about your treatment under the Mental Health Act. A SOAD is a consultant psychiatrist appointed by the 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.

[Top](#)

2. When do the courts use this section?

A criminal court might send you to hospital instead of prison under what's 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 isn't 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**' 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.

[Top](#)

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 don't 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, low, medium or high security.⁸

[Top](#)

4. How long will I be on this section?

Your responsible clinician (RC) is the professional in overall charge of your care in hospital.

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 RC renews the order, and
- for 12 months at a time after that if your RC renews the order again.

[Top](#)

5. What are my rights?

Can I appeal the hospital order?

If you think you shouldn't 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**’ 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

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.

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 get an advocate?

You have the right under The Mental Health Act to see an Independent Mental Health Advocate (IMHA).¹⁹

An IMHA can help you understand:²⁰

- your rights under the Mental Health Act,
- the rights that other people have in relation to the Act,
- the parts of the Act that apply to you,
- any conditions or restrictions to which you are subject, and
- any medical treatment you are receiving and the reasons for that treatment.

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,
- go with you to meetings with the people treating you, and
- represent you by speaking or writing on your behalf.

An IMHA can help you if you are unhappy about any part of your care and treatment while in hospital.

Hospital staff can tell you about the IMHA service at your hospital. You can usually find details of the local IMHA service by typing the following into an internet search engine, “Independent mental health advocacy [name of borough, county, town or city].”

You can contact the IMHA service directly if you want to.

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 isn’t 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.²²

You can find more information about ‘**Nearest relative**’ at www.rethink.org. Or call our General Enquires 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 doesn’t apply to patients on hospital orders.

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.

[Top](#)

6. Can I be given treatment if I don't consent to it?

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

But doctors can treat you even if you don't want it:²³

- 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 don't want it.²⁴

What about Electroconvulsive therapy (ECT)?

Doctors can't give you electroconvulsive therapy (ECT) unless:^{25, 26}

- you agree,
- you lack mental capacity and a SOAD agrees that you need it, or
- it's 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're 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 '**Complaints**' 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.

[Top](#)

7. Can I claim welfare benefits?

You are still entitled to claim some welfare benefits if you're in hospital under section 37 of the Mental Health Act.

You have the same right to claim benefits as any other hospital patient.

There are different rules for people who are detained in immigration removal centres. We don't give immigration advice. You can speak to a welfare benefits adviser for more information. Organisations such as Citizens Advice may be able to help. You can also search for welfare benefits and immigration advisers on this website:

<https://advicefinder.turn2us.org.uk>

You can find more information about '**Going into hospital - Money matters**' at www.rethink.org/advice-and-information/living-with-mental-illness/money-benefits-and-mental-health/

[Top](#)

8. Who can discharge me and what might happen?

You can be discharged from Section 37 by:

- your responsible clinician,
- 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 responsible clinician (RC) might think you need to be on a community treatment order (CTO).

A CTO is when you live in the community, but you remain under The Mental Health Act.^{27, 28}

Under a CTO you must agree to certain conditions.²⁹ This could include you getting medical treatment or taking certain medication. Your RC should make any conditions clear to you.

You can't be treated without your permission on a CTO.³⁰

A CTO means that your RC can order you back to hospital if they feel:³¹

- you need treatment in hospital again, and
- there is a risk of harm to you or other people if you aren't taken back to a hospital, or

- if you have not kept to your conditions.

You can find more information about '**Community treatment orders (CTOs)**' 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.

[Top](#)

9. 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.³²

Aftercare services provided free of cost must:³³

- 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**' 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.

[Top](#)

10. When will my hospital order become 'spent'? ³⁴

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 don't 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.

[Top](#)

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Rethink Mental Illness Advice Service

Phone 0808 801 0525
Monday to Friday, 9:30am to 4pm
(excluding bank holidays)

Email advice@rethink.org



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