

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 case if you need it. They can do this under section 36 of the Mental Health Act 1983. This factsheet looks at when and how courts use this section, and the professionals you might come across. It explains what your rights are and what could happen afterwards. This information is for anyone affected by, or interested in, section 36 of the Mental Health Act.

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.
- 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 have to pay for the report yourself.

This factsheet covers:

1. [What professionals might I come across in hospital?](#)
2. [When can the courts use this section?](#)
3. [How do the courts use this section?](#)
4. [How long will I be in hospital?](#)
5. [What are my rights?](#)
6. [Can I be treated without my consent?](#)
7. [Will I have to go back to court?](#)
8. [What might happen after I've been treated in hospital under section 36?](#)

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 and social worker. They are trained to assess your mental health.

Responsible clinician (RC): the RC is responsible for your care or treatment. The RC decides if you can leave hospital or they can renew your section. 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.

A court may do this instead of remanding you in custody in prison. You might also hear this called 'being remanded to hospital'.

The only time Section 36 can't be used are for offences where the length of punishment is fixed in law.²

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 isn't used if you have already been convicted of a crime. The court can instead send you to hospital under Section 37 of the Mental Health Act. This can only 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**' 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?

Two 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 could be admitted to hospital within 7 days of the decision to use Section 36.⁶

[Top](#)

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. The court can extend the section for further 28-day periods, up to 12 weeks at the most.⁹

[Top](#)

5. What are my rights?

What is an independent mental health advocate?

You can get support from an independent mental health advocate (IMHA).¹⁰

An IMHA can help you understand: ¹¹

- 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**' 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 apply to the court to end my detention in hospital?

You can apply to the court to end your detention in hospital under section 36.

You might not want to be detained in hospital if you feel that you aren't unwell.

You have the right to get your own medical report done to help you with this.¹² But you have to pay for the report yourself.¹³ In some cases, you could pay for this through Legal Aid.¹⁴ 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. Being on bail means the court will let you live in the community. But you have to agree to conditions, such as living at a certain address.

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/

Where can I get further information about my rights?

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 treated without my consent?

Doctors should ask you if you consent to their recommended treatment, if appropriate.¹⁵ But if you don't consent to treatment doctors can treat you for up to 3 months against your will.¹⁶

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 can't usually give you electroconvulsive therapy (ECT) unless you agree to it.¹⁷ They have to ask a second opinion appointed doctor (SOAD) to agree to give you ECT if:¹⁸

- you don't consent to it, or
- you don't have the mental capacity to consent.

In certain cases, doctors can also give you ECT if they think you need urgent treatment.¹⁹

Can I be restrained to be treated? ²⁰

There may be times when hospital staff need to restrain you to treat you. But restraint should only be used as a last resort.

Restraint should never be used as a punishment. And it mustn't be needlessly humiliating, distressing or make you feel less than a human being. This would be against the law.

The hospital must have a policy that gives clear guidelines on how staff can restrain patients, and in what circumstances. The policy must include guidance on how to make sure there is no risk of abuse. And guidance on how to protect your health and well-being. You can ask to see this policy.

If you aren't sure what the policy means you can ask an independent mental health advocate (IMHA) to explain it to you.

All staff working on wards should:

- have been trained on how to safely restrain patients. This should include disabled patients, older patients, young people and survivors of domestic abuse.
- know about you and the circumstances that led you to be detained in hospital. This includes any experience of trauma or existing health conditions you have.

What can I do if I'm unhappy about my treatment?

If you're 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-services/Patient%20advice%20and%20liaison%20services%20\(PALS\)/LocationSearch/363](http://www.nhs.uk/service-search/other-services/Patient%20advice%20and%20liaison%20services%20(PALS)/LocationSearch/363)

You can find more information about:

- Electroconvulsive Therapy (ECT)
- Advocacy
- 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.

[Top](#)

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 don't need to attend the court hearing.²¹

[Top](#)

8. What might happen after I've been treated in hospital under section 36?

After your detention in hospital under section 36, 3 things could happen.²²

- Your responsible clinician (RC) decides that you don't have a mental disorder. You will continue to go through the court process.
- After getting treatment, you are now well enough to go through the court process. Your RC may recommend that the court puts some support in place during your court case. This could help you understand what is happening so you can take an active part in your case.

- Your RC decides that you have a severe mental illness and thinks you need treatment under another section of the Mental Health Act such as section 37.

You can find more information about:

- Criminal courts and mental health
- Section 37 of 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.

[Top](#)

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

References

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

² s37(1), Mental Health Act 1983 c20.

³ Department of Health. *Reference Guide to the Mental Health Act 1983*. London: TSO; 2015. Page 143.

⁴ s37, Mental Health Act 1983 c20.

⁵ s36(1), Mental Health Act 1983 c20.

⁶ s36(3), Mental Health Act 1983 c20.

⁷ s36(6), Mental Health Act 1983 c20..

⁸ s36(4), Mental Health Act 1983 c20..

⁹ s36(6), Mental Health Act 1983 c20..

¹⁰ Department of Health. *Mental Health Act 1983: Code of Practice*. London: TSO; 2015. Para 6.8.

¹¹ Department of Health. *Mental Health Act 1983: Code of Practice*. London: TSO; 2015. Para 6.12.

¹² s36(7), Mental Health Act 1983 c20..

¹³ s36(7), Mental Health Act 1983 c20.

¹⁴ Department of Health. *Mental Health Act 1983: Code of Practice*. London: TSO; 2015. Para 22.16.

¹⁵ Department of Health. *Mental Health Act 1983: Code of Practice*. London: TSO; 2015. Para 24.41

-
- ¹⁶ S58(1), Mental Health Act 1983 c20.
- ¹⁷ s58A(3), Mental Health Act 1983 c20.
- ¹⁸ Department of Health. *Mental Health Act 1983: Code of Practice*. London: TSO; 2015. Para 25.22..
- ¹⁹ s62(1), Mental Health Act 1983 c20. As note 1, (MHA 1983), s62(1).
- ²⁰ The Equality and Human Rights Commission. *Your rights when detained under the Mental Health Act in England – Forensic. Can I be restrained? Page 79.*
www.equalityhumanrights.com/en/publication-download/your-rights-when-detained-under-mental-health-act-england (accessed 16.09.21)
- ²¹ s36(5), Mental Health Act 1983 c20.
- ²² Cygnet Health care. *Section 36 – Remand to hospital for treatment.*
www.cygnethealth.co.uk/service-users-carers/mental-health-act/section-36/ (accessed 24th March 2021)

© Rethink Mental Illness 2022

Last updated: June 2021

Next update: June 2024

Version: 5

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 advice@rethink.org



Did this help?

We'd love to know if this Information helped you

Drop us a line at: feedback@rethink.org

or write to us at Rethink Mental Illness:
RAIS

PO Box 18252

Solihull

B91 9BA

or call us on 0808 801 0525

We're open 9:30am to 4pm

Monday to Friday (excluding bank holidays)

**Rethink
Mental
Illness.**

**Equality, rights, fair treatment, and
the maximum quality of life for all
those severely affected by mental
illness.**

For further information on Rethink
Mental Illness Phone 0121 522 7007
Email info@rethink.org



rethink.org

Need more help?

Go to rethink.org for information on symptoms, treatments, money and benefits and your rights.

Don't have access to the web?

Call us on 0121 522 7007. We are open Monday to Friday, 9am to 5pm, and we will send you the information you need in the post.

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.

Can you help us to keep going?

We can only help people because of donations from people like you. If you can donate please go to rethink.org/donate or call 0121 522 7007 to make a gift. We are very grateful for all our donors' generous support.



Registered with
FUNDRAISING
REGULATOR



CYBER
ESSENTIALS



INVESTORS IN PEOPLE
We invest in people Silver

