

Section 35

When the criminal 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, when and how courts use this section. It explains what your rights are during this section and what could happen afterwards.



KEY POINTS

- The Mental Health Act is the law that mental health professionals use to bring you to hospital for assessment and treatment. This is also known as being 'sectioned'.
- You must need assessment or treatment in hospital. This must be the best thing for your health or safety or to protect other people.
- The criminal courts can send you to hospital using section 35 of the Mental Health Act. They would do this if they want more information about your mental health.
- They can use this section at any point during your court case.
- A medical professional will write a medical report about your mental health and will recommend what the court should do.
- The court can remand you to prison if they do not think you need to be in hospital. You can get a mental health report done in prison.
- Hospital staff cannot treat you against your will if you are on section 35.

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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 (AC): an AC is a mental health professional who is allowed to assess or treat you under the Mental Health Act. A doctor, psychologist, nurse, occupational therapist and social worker 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. The RC decides if you can leave hospital or they can renew your section. This will be based on information from a different healthcare professionals who have worked with you.

An RC is an Approved Clinician with more training.

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2. When is this section used?

The criminal court (magistrates' court or Crown Court) might think you have a mental illness. They can send you to hospital to have a medical report if they want more information.¹ The magistrates' court can use this section before sentencing you.² The Crown Court can use this section at any time in your court case.³

In hospital an Approved Clinician (AC) writes the report.⁴ They should assess you. They will give the court their opinion about your mental health.

The report should:⁵

- answer the court's questions, and
- be written in a language that anybody can understand.

The report will include:

- a summary of your background,
- any concerns there are for you or others,
- your mental health history and current situation,
- if there is a chance that you will be convicted again,
- the future safety of you and others,
- how others see the danger of your situation, and
- options for treatment and what medical help you could have.

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.

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3. How can someone use this section?

The court will decide if they need a medical report. If they feel you should be in hospital while waiting for the report, they will use section 35.⁶ If they do not feel you need to be in hospital they could send you to prison on remand. A psychiatrist can assess you there. They could also let a psychiatrist assess you in the community on bail. If they grant you bail the court will give you conditions that you need to meet, such as living at a certain address.

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4. How long will I be on this section?

The doctor can keep you in hospital for up to 28 days while they do the report.⁷ If your Responsible Clinician (RC) needs more time to complete the report, the court can extend the section up to 12 weeks at the most.⁸

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5. What are my rights?

You cannot appeal this section.⁹ But you can pay for an independent doctor to assess you.¹⁰ The independent doctor might feel you do not need to be in hospital on this section. You could ask to be sent to prison on remand or to be in the community on bail. The court will decide what to do.

Speak to a member of hospital staff, an advocate or your solicitor for advice.

You can get support from an Independent Mental Health Advocate (IMHA).¹¹ An IMHA can help you take part in decisions about your care and treatment, and can help in finding out about your rights. 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 contact 0121 522 7007 and ask for the information to be sent to you.

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6. Can the doctor treat me if I don't want it?

Doctors need your permission to treat you if you are on a section 35.¹² You may be under 'dual detention'. This means you may be on two sections. You could be under a section 2 or 3 as well as the section 35. If this is the case they can treat you without your permission.¹³

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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 be in the court for this. If you do not have a solicitor, you will need to go to court.¹⁴

You will need to go back to court when the section ends.

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8. What might happen after this section?

After your section 35 ends three things could happen.

- The report says you do not have a mental illness and you will continue to go through the criminal court process.
- The report says you do have a mental illness. However, you could go through the court process, perhaps with some support. The court could make changes to help you understand what is happening and take an active part in your case.
- The report says that you have a serious mental illness and you need treatment under another section of the Mental Health Act such as section 36 or 37.

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FURTHER READING

- You can find more information about:
 - Advocacy
 - Criminal Courts and Mental Health
 - Mental Health Act
 - Forensic Mental Health Services
 - Legal Advice
 - Complaints about Court
 - Section 36
 - Section 37
 - 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.



REFERENCES

¹ s35 (1), Mental Health Act 1983 c20.

² As note 1 (MHA 1983), s35(2)(b)

³ As note 1 (MHA 1983), s35(2)(a)

⁴ As note 1 (MHA 1983), s35(4)

⁵ Department of Justice. *Good Practice Guidance: Commissioning, administering and producing psychiatric reports for sentencing*. Para 3.35

⁶ As note 1 (MHA 1983), s35(1)

⁷ As note 1 (MHA 1983), s35(7)

⁸ As note 1 (MHA 1983), s35(7)

⁹ Department of Health. *Mental Health Act 1983: Reference Guide* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417412/Reference_Guide.pdf . Para 6.67 Accessed 8th February 2018

¹⁰ As note 1 (MHA 1983), s35(8)

¹¹ As note 9, at para 4.3

¹² Department of Health. *Mental Health Act 1983: Code of Practice*. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF. Para 22.39 Accessed 12th December 2017.

¹³ As note 12, Para 22.41

¹⁴ As note 1 (MHA 1983), s35 (6)

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