

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 during this section and what could happen afterwards.



KEY POINTS

- The Mental Health Act 1983 is the law that mental health professionals use to bring you to hospital for assessment and treatment. This is also known as being 'sectioned'.
- The Crown Court can use section 36 if they think you should be in hospital for treatment.
- They can use this section at any point during your court case.
- The hospital can treat you without your permission.
- You can ask the court to end your detention in hospital under section 36. You may be able to get an independent medical report to help.

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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 use 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 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.

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 do the courts use this section?

Section 36 can be used by a Crown Court to send someone to hospital for treatment.¹ A court may do this instead of remanding you in custody. You might also hear this called 'being remanded to hospital'.

If you are in custody for an offence punishable with imprisonment, then Section 36 may be used. This means you are going to be on trial, or are already on trial, for a crime that could mean you go to prison.² The only time Section 36 cannot be used are for offences where the length of punishment is fixed in law.³

The court can do this at any point during your court case. For example, they can do this when you are waiting for your trial to start or when you are waiting for the court to sentence you.⁴

Section 36 is not used if you have already been convicted of a crime. If a court finds you guilty of a crime, but wants to send you to hospital instead of prison, they can do this under Section 37 of the Mental Health Act.⁵

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.

3. How do the courts use this section?

Two Approved Clinicians (ACs) need to assess you. They have to tell the court that:⁶

- you have a mental illness,
- you need treatment for it, 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 36.⁷

4. How long will I be on this section?

Doctors can keep you in hospital for 28 days.⁸ Your Responsible Clinician (RC) will update the court after this time.⁹ Your RC is the doctor responsible for you 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.¹⁰

5. What are my rights?

You can ask the court to end your remand in hospital under Section 36.¹¹ You might not want to be kept in hospital if you feel that you are not unwell. This might lead to you:

- being placed on remand in prison, or
- out 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.

If you want to end your Section 36, you are allowed to ask an independent doctor to assess you, but you must pay for this.¹² Or in some cases, you could pay for this through Legal Aid.¹³ 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).¹⁴ 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 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 the doctor treat me if I don't want it?

Doctors can treat you for three months even if you don't want it.¹⁵ Your Responsible Clinician (RC) will tell you about any treatment that you need. The RC is the doctor in charge of your treatment in hospital.

Doctors cannot usually give you electroconvulsive therapy (ECT) unless you agree to this.¹⁶ If they want to give you ECT, but you do not agree or you do not have the mental capacity to agree they have to get a 'Second Opinion Appointed Doctor' (SOAD) to agree to this.¹⁷ In certain cases they may also give you ECT if they think you need urgent treatment.¹⁸

You should speak to your named nurse or psychiatrist if you are unhappy about your treatment. You can also get support from an Independent Mental Health Advocate (IMHA).¹⁹ They can help you to raise any issues you have about your care and treatment. The hospital should have details of local advocacy services.

You can find more information about:

- Electroconvulsive Therapy (ECT)
- 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.

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7. Will I have to go back to court?

Your Responsible Clinician (RC) can ask the court to extend the section at the end of each 28-day period, for a maximum of 12 weeks.²⁰

You do not need to be in court as long as you have a solicitor to represent you. If you do not have a solicitor, you will need to go to court.²¹

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

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8. What might happen after this section?

After your detention on Section 36, three things could happen.²²

- Your Responsible Clinician (RC) decides that you do not have a mental illness. 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 and 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.

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The Maze - A Practical Guide to the Mental Health Act 1983 (Amended 2007)- by South London and Maudsley Trust.

This book has lots of useful information about the Mental Health Act.

The Mental Health Act 1983

You can read Section 36 of the Mental Health Act at the following website.

Website: <http://www.legislation.gov.uk/ukpga/1983/20/section/36>



¹ s36, Mental Health Act 1983 c20.

² As note 1, (MHA 1983), s36(2).

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

⁴ Department of Health. *Reference Guide to the Mental Health Act 1983*. London: TSO; 2015. Page 143.

⁵ As note 1, (MHA 1983), s37.

⁶ As note 1, (MHA 1983), s36(1).

⁷ As note 1, (MHA 1983), s36 (3).

⁸ As note 1, (MHA 1983), s36(6).

⁹ As note 1, (MHA 1983), s36(4).

¹⁰ As note 1, (MHA 1983), s36(6).

¹¹ As note 1, (MHA 1983), s36(7).

¹² As note 1, (MHA 1983), s36(7).

¹³ Department of Health. *Mental Health Act 1983: Code of Practice*. London: TSO; 2015. Para 22.16.

¹⁴ As note 13, at page 55, para 6.8.

¹⁵ As note 1, (MHA 1983), s58(1).

¹⁶ As note 1, (MHA 1983), s58A(3).

¹⁷ As note 13, at para 25.22.

¹⁸ As note 1, (MHA 1983), s62(1).

¹⁹ As note 13, at para 6.8.

²⁰ As note 1, (MHA 1983), s36(6).

²¹ As note 1, (MHA 1983), s36(5).

²² South London and Maudsley NHS Foundation Trust. *The Maze: A Practical Guide to the Mental Health Act 1983 (Amended 2007)*. London: South London and Maudsley NHS Foundation Trust; 2010. Page 174.

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