

# Section 37/41

## Hospital order given by Crown Court

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This factsheet looks at section 37/41 of the Mental Health Act. It looks at the professionals you might come across in hospital, when and how the 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 which mental health professionals use section 37/41 to bring you to hospital for treatment. This is also known as being 'sectioned'.
- You must need treatment in hospital. This must be the best thing for your health or safety or to protect other people.
- The criminal courts can use section 37 if they think you should be in hospital instead of prison. Section 41 is a restriction order. The Crown Court can add this order to a section 37 if they feel you are a risk to the public.
- You can appeal to the courts if you do not agree with this sentence. You need to appeal in a certain time period so you should get legal advice from a solicitor.
- You can appeal to the Hospital Managers and the Mental Health Review Tribunal (MHRT). However, the Secretary of State for Justice (the Ministry of Justice) decides when you can leave.
- The hospital can treat you without your permission for up to 3 months.
- When you are discharged, you can 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 the doctor treat if I don't want it?](#)
7. [How can I be discharged and what might happen?](#)
8. [What sort of aftercare could I get?](#)

### 1. Professionals you might come across

There are different professionals that might be involved in your care while you are in hospital 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.

**Secretary of State for Justice:** the Ministry of Justice (MOJ) take on this role. They are a government department that is involved in your care if you have a restriction order (section 41 or 49 of the Mental Health Act). The MOJ decide things such as whether you can move from prison to hospital, or from hospital to prison. Your Responsible Clinician needs to get permission from them before letting you leave hospital.

[Top](#)

### 2. When do the courts use this section?

Only a Crown Court can use a section 37/41. You need to have a mental illness that needs treatment in hospital. This must be the best thing for your health or safety or to protect other people.

There are certain offences you can go to prison for. The court must have convicted (found guilty) you of one of these.

The Crown Court can use this section without convicting you. The court may decide you are too unwell to understand the pleas of guilty or not (known as being unfit to plead). If so, they can use section 37/41 if they decide you did what you were charged with.

A section 37 is a hospital order, which is an alternative to a prison sentence. This means the court will send you to hospital instead of prison. The judge has the option of adding a section 41 restriction order to this, making the section a 37/41. The judge in a Crown Court can do this if they think you are a risk to the public. The restriction order means that there are restrictions on you and your Responsible Clinician (RC). One restriction is that your RC needs to get permission from the Secretary of State for Justice before they can discharge you.

[Top](#)

### **3. How do the courts use this section?**

Two registered medical practitioners have to assess you to see if you have a mental illness that means you should be in hospital.

Only a Crown Court can give a restriction order (the 41 part of the section 37/41). A magistrates' court cannot add a restriction order, but they can pass the case to the Crown Court to make the order.

One of the doctors who assessed you needs to speak in court before a judge can give a restriction order.

One of the doctors should be from the hospital where you will be staying. The managers of the hospital should find you a bed within 28 days. You might have to wait in prison until a bed is available. Some prisons have healthcare units where you could stay, which is similar to being in hospital.

You will stay in a secure hospital. There are three types of secure hospitals; low, medium or high security. The judge will decide what level of security is needed.

You can find more information on [www.rethink.org](http://www.rethink.org) about:

- **Healthcare in Prison**
- **Forensic Mental Health Services**

Or call 0121 522 7007 and ask for the information to be sent to you.

[Top](#)

### **4. How long will I be on this section?**

The Mental Health Act changed in 2007. If you were given a section 37/41 before then, the section may or may not have a time limit.

Since 2007, a section 37/41 does not have a time limit. This means the section does not have a fixed end date and the section does not need to be renewed, like other sections do.

[Top](#)

## 5. What are my rights?

If you do not think the court should have been given you a section 37/41 as a sentence, you can appeal. You can appeal against the order in the Court of Appeal. You can appeal within 28 days of the court making the order.

It is important to get legal advice before appealing. Your solicitor will be able to help.

While you are in hospital, you can appeal to the Hospital Managers.

You can appeal to a Tribunal after the first 6 months of being in hospital and every year after that. You can ask for a list of mental health solicitors who will be able to advise and represent you. People in hospital under the Mental Health Act get legal aid to pay for solicitors at Tribunals.

If you are unhappy about any part of your care and treatment while in hospital, you can speak to an Independent Mental Health Advocate (IMHA). An IMHA can help you take part in decisions about your care and treatment and tell you 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](http://www.rethink.org). Or call 0121 522 7007 and ask for the information to be sent to you.

[Top](#)

## 6. Can I be treated against my will?

Doctors can treat you for three months even if you don't want it. If they want to continue the treatment but you don't agree to this, they need to get a second opinion. An independent doctor known as a Second Opinion Appointed Doctor (SOAD) will visit you to give their opinion. The doctors can only continue treatment if the independent doctor agrees you should have it.

Doctors cannot give you electroconvulsive therapy (ECT) unless you agree. If they want to give you ECT but you do not agree they have to get a SOAD to assess you and agree you need it.

You can find more information about '**Electroconvulsive Therapy (ECT)**' at [www.rethink.org](http://www.rethink.org). Or call 0121 522 7007 and ask for the information to be sent to you.

You should speak to your named nurse or psychiatrist if you are unhappy about your treatment. You can also speak to an Independent

Mental Health Advocate (IMHA) who can help raise any issues you have about your care and treatment.

[Top](#)

## 7. Who can discharge me and what might happen?

The Secretary of State for Justice can discharge you from Section 37/41.

Your Responsible Clinician (RC), Hospital Managers and tribunal can only discharge you if they have permission from the Secretary of State for Justice.

The Secretary of State could give you conditional or absolute discharge. Conditional discharge means you will need to meet certain conditions in the community such as getting treatment. If you break these conditions they can make you go back to hospital.

You can apply for absolute discharge if things go well in the community. This means you would not need to meet any conditions anymore. You can apply to the Mental Health Review Tribunal for absolute discharge one year after your conditional discharge. If you are not successful, you can then apply every two years after that.

If you get a conditional discharge, you can get free legal representation at Tribunals under the Legal Aid scheme.

[Top](#)

## 8. What sort of aftercare could I get?

The NHS and Social Services must provide you with free aftercare services under section 117 of the Mental Health Act. This can include things such as therapies, services or supported housing. You can find more information about '**Section 117 aftercare**' at [www.rethink.org](http://www.rethink.org). Or call 0121 522 7007 and ask for the information to be sent to you.

[Top](#)



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- Complaints about Court
- Criminal Courts and Mental Health
- Mental Health Act
- Legal Advice
- Section 37

Or call 0121 522 7007 and ask for the information to be sent to you



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

The Mental Health Act 1983. *Section 37*. Available from <http://www.legislation.gov.uk/ukpga/1983/20/section/37> (accessed July 2015).

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## Rethink Mental Illness Advice Service

Phone 0300 5000 927

Monday to Friday, 10am to 2pm

Email [advice@rethink.org](mailto:advice@rethink.org)

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**Drop us a line at:** [feedback@rethink.org](mailto:feedback@rethink.org)

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Feedback

PO Box 68795

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We're open 10am to 2pm, Monday to Friday.



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Go to **[www.rethink.org](http://www.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 0300 5000 927 between 10am and 2pm, 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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