

# Section 38

## Criminal courts giving an interim hospital order

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This factsheet looks at section 38 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 38 to bring you to hospital for assessment and 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 38 when they find you guilty of an offence that you could go to prison for.
- This is an 'interim' order. This means it is short-term while the court decides what sentence to give you.
- The hospital can treat you without your permission for up to 3 months.
- Your Responsible Clinician (the doctor responsible for your care) will see how you respond to treatment and tell the court.
- The court will decide what sentence to give you. You could stay in hospital on a hospital order (section 37 or 37/41) or go to prison.

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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 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.

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

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 courts can use section 38 to send you to hospital before sentencing you. The court can see how you respond to treatment and this will help them to decide what sentence to give you.

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

Two registered medical practitioners have to assess you and tell the court that you have a mental illness that needs treatment in hospital. 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, this 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.

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

You will be in hospital on section 38 for up to 12 weeks at first. Your Responsible Clinician (RC) may tell the court that you need to stay in hospital. If so, the court can renew the section for further periods of 28 days. The maximum amount of time you could spend in hospital is one year.

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### 5. What are my rights?

If you do not think you should be on this section, you can appeal. If the magistrates' court gave you the section 38, you would appeal to the Crown Court. If the Crown Court gave the section 38, you would appeal to the Court of Appeal. You should get legal advice before appealing. Your solicitor will be able to help.

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.

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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. Your Responsible Clinician (RC) will tell you about any treatment that you need.

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 talk 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.

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## 7. Will I have to go back to court?

You do not need to back to court if you have a solicitor who can represent you. If you do not have a solicitor, you will need to go to court. If you are not well enough to go to court, your Responsible Clinician (RC) could write to the court to tell them this and ask for the hearing to be delayed until you are well enough.

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## 8. What might happen after this section?

Your Responsible Clinician (RC) will see how you respond to treatment in hospital. They will report back to the court and suggest what should happen next.

The court will decide what sentence to give you. They could decide that you:

- should stay in hospital and change the section 38 to a section 37 or 37/41, or
- do not need to be in hospital and look at another type of sentence.

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

- **Section 37**
- **Section 37/41**
- **Prison – Going in**
- **Prison – What happens while I am in prison**

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



FURTHER  
READING

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

- Complaints about court
- Criminal Courts and Mental Health
- Mental Health Act
- Legal Advice

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 38*.

<http://www.legislation.gov.uk/ukpga/1983/20/section/38> (accessed July 2015).



REFERENCES

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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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### Did this help?

We'd love to know if this information helped you.

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

**or write to us at Rethink Mental Illness:**

Feedback

PO Box 68795

London SE1 4PN

**or call us on** 0300 5000 927.

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



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quality of life for everyone  
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on Rethink Mental Illness  
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### Need more help?

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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