

# Detention under the Mental Health Act

This factsheet provides information about detention under the Mental Health Act. This includes the criteria for detention or 'sectioning', information about different sections and the rights of someone who has been detained.



- The Mental Health Act is the law under which someone can be admitted, detained and treated in hospital against their wishes.
- To be detained or 'sectioned' someone must be suffering from a mental disorder which requires assessment or treatment and this needs to be given in hospital in the interests of their own health or safety or to protect other people.
- There are different sections of the Mental Health Act that have different purposes.
- Anyone detained must be told their rights, including the right to appeal and the right to the assistance of an advocate.
- Someone can be given treatment such as medication, against their will whilst under section.
- When someone is discharged from hospital they should receive aftercare. For some people this might be free aftercare under section 117.

## This factsheet covers:

1. [What is the Mental Health Act?](#)
2. [What is a mental disorder according to the Mental Health Act?](#)
3. [What happens when you are sectioned?](#)
4. [What support am I entitled to whilst in hospital?](#)
5. [Can I avoid being sectioned?](#)
6. [Section 2](#)
7. [Section 3](#)
8. [Section 4](#)
9. [Section 5](#)

10. [Community Treatment Orders](#)

11. [Further reading](#)

### 1. What is the Mental Health Act?

The Mental Health Act 1983 is the law under which a person can be admitted, detained and treated in hospital against their wishes. The Act covers the rights of people while they are detained, how they can be discharged from hospital and what aftercare they can expect to receive. The Act applies in England and Wales. The Mental Health Act 1983 was recently amended by the Mental Health Act 2007.

The Mental Health Act 1983 is divided into different sections. When you are admitted to hospital under compulsion this is commonly known as "being sectioned".

You can be sectioned under a number of different parts of the Act for assessment or to receive treatment for a mental disorder. This document deals only with the civil sections of the Act. These are the sections that do not involve the criminal law and include sections 2, 3, 4, 5(2) and 5(4). For information on sections of the act used by the police, courts and prisons, please see our factsheet on '[Forensic Sections](#)', which is available to download for free from [www.rethink.org/factsheets](http://www.rethink.org/factsheets) or by contacting the Rethink Advice & Information Service directly. Our contact details are at the end of this factsheet.

[Top](#)

### 2. What is a mental disorder according to the Mental Health Act?

Mental disorder is defined as '*any disorder or disability of mind*'. This definition includes conditions such as schizophrenia, depression, bipolar disorder, anxiety disorder, obsessive-compulsive disorder, eating disorders, personality disorders, autistic-spectrum disorders, organic disorders such as dementia, behavioural changes due to brain injury and mental disorders due to drug use. The definition includes learning disability only where it is associated with *abnormally aggressive or seriously irresponsible behaviour*.<sup>1</sup>

A person cannot be detained if they have drug or alcohol dependency alone, but can be detained if they have drug/alcohol dependency **and** another form of mental disorder.<sup>2</sup>

[Top](#)

### 3. What happens when you are sectioned?

When you are sectioned three people must agree that you need to be detained in hospital (there are exceptions in urgent situations). Usually, the three people would consist of an Approved Mental Health Professional (AMHP) or nearest relative as specified by the Act, a

doctor who has received special training, and a registered medical practitioner.

The two doctors must agree that you are suffering from a mental disorder of a nature or degree which warrants your detention in a hospital for assessment or treatment and that you ought to be detained in the interests of your own health, your own safety or with a view to the protection of other people. If possible, one of the doctors should already know you.

The role of an AMHP can be undertaken by social workers, psychologists, occupational therapists and nurses, and are seen to provide a more objective and 'social' perspective in considering detention.<sup>3</sup>

The AMHP may talk to your nearest relative if detention under section 2 is being considered and has to do so if you are going to be detained under section 3<sup>4</sup> (unless it is not practical to do so). If you do not wish the AMHP to talk to your nearest relative for justifiable reasons, the AMHP *may* be able to respect your wishes about this. For information on the nearest relative, please see our factsheet on '[Nearest relative](#)' which is available to download for free from [www.rethink.org/factsheets](http://www.rethink.org/factsheets) or by contacting the Rethink Advice & Information Service directly. Our contact details are at the end of this factsheet.

The AMHP will then decide whether to make an application to a hospital for a bed for you. The person making the application must have seen you within the past 14 days while the doctors must have seen you together or within five days of each other.

#### **4. What support am I entitled to whilst in hospital?**

People detained under the Mental Health Act are entitled to support from an Independent Mental Health Advocate (IMHA). This includes those under a Community Treatment Order for supervised community treatment.

It does not include patients detained under an emergency section (Section 4), holding powers of the Mental Health Act (Section 5), or in a place of safety under police powers (section 135 or 136). Informal patients are not able to access an IMHA, unless they are being considered for neurosurgery for their mental disorder or are under 18 and are being considered for electroconvulsive therapy (ECT).

The aim of an IMHA is to help patients participate in decisions about their care and treatment, and can assist in helping to find out about your rights and how to exercise them. Patients should be informed of their right to access an IMHA and this is the responsibility of who is in charge of their care at the time.

People detained under the Mental Health Act are entitled to free legal representation at Tribunals under the Legal Aid scheme. The ward you

are detained on is likely to have a list of mental health solicitors who will be able to advise and represent you. You can also search for mental health solicitors on the Community Legal Advice website (<http://legaladviserfinder.justice.gov.uk/>) or by calling Community Legal Advice on 0845 345 4 345 (Monday to Friday 9am to 8pm, Saturday 9am to 12.30pm).

The involvement of an IMHA does not affect the right of a patient or nearest relative to seek advice from a solicitor.

[Top](#)

## **5. Can I avoid being sectioned?**

If you feel that you do not need to be sectioned, you should let the doctors know the reason why. You may want to explain more about how you will cope at home and what forms of support you have in place. The Mental Health Act Code of Practice states that the people assessing you should consider all alternatives to compulsory admission to hospital.<sup>5</sup> If you wish to have a friend or family member with you during a Mental Health Act assessment, you should let the AMHP or your nearest relative know.

The interview may happen at your home, in hospital, in a place of safety or in a police station. If you are not in hospital they will usually arrange for you to be taken there in an ambulance. In some situations the police may accompany the medical practitioners or take you to hospital.

[Top](#)

## **6. Section 2**

Section 2 (s2) allows a person to be admitted to hospital for an assessment of their mental health and receive any necessary treatment. Assessment can cover whether you suffer from a mental disorder, which type of mental disorder you have or how you might respond to treatment. An admission to hospital under s2 is usually used when you have not been assessed in hospital before or when you have not been assessed in hospital for a considerable period of time.

### ***How is a section 2 carried out?***

An application for admission to hospital under a s2 must be made by an Approved Mental Health Professional (AMHP) or your nearest relative. They must have seen you within 14 days of making the application. In addition you must be seen by two separate doctors, one of whom has been approved under the Mental Health Act. The doctors must have seen you within 5 days of each other. Admission to hospital must be arranged within 14 days of the last medical examination.

### ***How long can I be detained for?***

You can be detained for up to 28 days but does not necessarily mean you will be. S2 cannot be renewed but you may be transferred onto a section 3 (see below).

### ***What are my rights on a section 2?***

You may be given a Patient Rights Leaflet by a member of the hospital staff which explains your legal rights. You have the right to appeal against detention to a Tribunal during the first 14 days that you are detained. You also have the right to appeal to the Mental Health Act managers. You are entitled to request the assistance of a Independent Mental Health Advocate who can assist you to raise any issues you have in relation to your care and treatment.

### ***Can I be treated against my will?***

Under s2, you do not have the right to refuse treatment. Some treatments however, cannot be given to you without your consent unless specific criteria are fulfilled. These treatments include electro-convulsive therapy (ECT). If you are unhappy about the treatment you are receiving you should talk to your named nurse or psychiatrist. An Independent Mental Health Advocate may be able to help you put your case forward.

### ***Who can discharge me?***

You can be discharged from s2 by:

- The doctor responsible for your care in hospital (Responsible Clinician)
- The Mental Health Act managers
- Your Nearest Relative (although this can be overruled by the Responsible Clinician, usually the doctor in charge of your care)
- The Tribunal

### ***What sort of aftercare can I expect?***

For many people the time after you have been discharged is a crucial period. Before you are discharged, a care plan should be drawn up under the Care Programme Approach which will look at how all the needs resulting from your condition will be met. Many hospitals also agree to contact you within 7-14 days of discharge to see how you are getting on.

[Top](#)

## **7. Section 3**

Section 3 (s3) allows a person to be admitted to hospital for treatment. It must be necessary for your health, your safety or for the protection of other people that you receive treatment and it cannot be provided unless you are detained in hospital.

In addition the mental disorder must be of a nature or a degree that requires treatment in hospital.

You can be detained under s3 if you are well known to mental health services and there is little need for assessment. Alternatively, you may be detained under s3 following an initial admission under section 2.

### ***How is a section 3 carried out?***

An application for admission to hospital under a s3 must be made by an Approved Mental Health Professional (AMHP) or your nearest relative. They must see you within 14 days of making the application. In addition you must be seen by two separate doctors, one of whom has been approved under the Mental Health Act. The doctors must have seen the patient within 5 days of each other. Admission to hospital must be arranged within 14 days of the last medical examination.

### ***How long can I be detained for?***

You can be detained for up to 6 months, but that does not necessarily mean you will be detained for this period of time. Detention under s3 can be renewed for a further period of 6 months, and then for further periods of one year at a time.

Detention under s3 can only be renewed if you have been seen and assessed by the doctor responsible for your care in hospital during the 2 months before the date at which your s3 is due to expire.

### ***What are my rights on a section 3?***

You may be given a Patient Rights Leaflet by a member of the hospital staff which explains your legal rights. You have the right to appeal against detention to a Tribunal once during the first six months of detention, and if your s3 is renewed once during the second six months and then once during each period of one year. You also have the right to apply for discharge to the Mental Health Act managers at any time whilst you are detained. You are entitled to request the assistance of an Independent Mental Health Advocate who can assist you to raise any issues you have in relation to your care and treatment.

### ***Can I be treated against my will?***

Under s3 you do not have the right to refuse treatment. Treatment can be provided to you without your consent for three months, but after this time you have to be seen by a Second Opinion Appointed Doctor (SOAD). A SOAD will meet with you to decide if they think that the treatment is necessary or not. After three months, treatment can only be given without your consent with SOAD approval.<sup>6</sup> Some treatments cannot be given to you without your consent unless specific criteria are fulfilled. These treatments include electroconvulsive therapy (ECT).

If you are unhappy about the treatment you are receiving you should talk to your named nurse or psychiatrist. An Independent Mental Health Advocate may be able to help you put your case forward.

### ***Who can discharge me?***

You can be discharged from s3 by:

- The doctor responsible for your care in hospital (Responsible Clinician)
- The Mental Health Act managers
- Your Nearest Relative (although this can be overruled by the Responsible Clinician, usually the doctor in charge of your care)
- The Tribunal

### ***What sort of aftercare can I expect?***

The Mental Health Trust and Social Services department must provide you with aftercare services under section 117 of the Mental Health Act. More information can be found in our '[Section 117 aftercare](#)' factsheet which is available to download for free from [www.rethink.org/factsheets](http://www.rethink.org/factsheets).

[Top](#)

## **8. Section 4**

Section 4 (s4) is used in emergency situations where, were it not an emergency, detention under section 2 would ordinarily be used. S4 allows a person to be admitted to hospital for an assessment of their mental health for a limited period of time and requires the recommendation of only one doctor (unlike section 2 which requires two medical recommendations)

You can be detained under a s4 if:

- You are suffering from a mental disorder of a nature or degree which warrants your detention in a hospital for assessment or assessment followed by medical treatment; and
- You need to be detained in the interests of your own health, your own safety or with a view to the protection of other people; and
- It is of urgent necessity that you are admitted and detained under section 2; and
- That compliance with the usual section 2 requirements would involve an "undesirable delay"

### ***How is a section 4 carried out?***

An application for admission to hospital under a s4 must be made by an Approved Mental Health Professional (AMHP) or your nearest relative. In addition you must be seen by a doctor (preferably one that knows you or one that has been approved under the Mental Health Act). The doctor and the applicant must have seen you within the previous 24 hours and you must be admitted to hospital within 24 hours of being examined by the doctor or from when the application was made.

### ***How long can I be detained for?***

You can be detained for up to 72 hours but does not necessarily mean you will be. A second doctor should assess you as soon as possible after you are detained and decide whether the s4 should be converted into a section 2.

### ***What are my rights on a section 4?***

You may be given a Patient Rights Leaflet by a member of the hospital staff which explains your legal rights.

### ***Can I be treated against my will?***

Under s4 you have the right to refuse treatment and your consent must be provided for any treatment to be given. There are some circumstances when treatment can be given without your consent. The first situation is where you do not have the capacity to make a decision about treatment and the treatment is in your best interests. The second situation is when the treatment needs to be given in an emergency to prevent serious harm to yourself or others.

### ***Who can discharge me?***

You can be discharged from s4 by:

- The doctor responsible for your care in hospital (Responsible Clinician)

[Top](#)

What sort of aftercare can I expect?

It is unlikely that you will be discharged back home immediately after a s4. You will usually be admitted as either an informal patient (voluntary) or formal (patient under section) for a period of time.

## **9. Section 5**

Section 5 (s5) is used by a doctor or nurse to prevent someone leaving hospital who is an inpatient receiving hospital treatment. This can include a patient receiving treatment in a general hospital for a physical condition. It should be used only in circumstances where it is not possible or safe to use sections 2, 3, or 4.

S5(2) is the doctor's holding power. The doctor in charge of your care at the time or one nominated by him/her must produce a report about you stating how the criteria are met and reasons why "informal treatment is no longer appropriate". S5(2) can be used both in a psychiatric hospital and a general hospital.

S5(4) is the nurse's holding power. Nurses must be of a 'prescribed class', which means that they are registered in the area of mental health or learning disabilities nursing. This power can only be used if you are receiving in-patient treatment for a mental disorder. So that:

- You appear to be suffering from a mental disorder to such a degree that it is necessary your health or safety or for the



- protection of others for you to be immediately stopped from leaving the hospital; and
- It is not practicable to get a doctor to attend who might place the patient on s5(2)

### ***How long can I be detained for?***

Under a s5(2), you can be held for up to 72 hours. This is not renewable. You must be assessed as quickly as possible by an Approved Mental Health Professional (AMHP) and doctors for possible admission under the Mental Health Act.

Under s5(4), you can be held up to 6 hours. This is not renewable. The holding power ends as soon as a doctor arrives. The doctor may transfer you onto a s5(2) or you may continue as a voluntary patient. If you need to be detained under a section 2 or 3, an assessment by an Approved Mental Health Professional (AMHP) and doctors must be arranged as quickly as possible.

### ***What are my rights on a section 5?***

If you are placed on a s5(2) or s5(4) you may be given a Patient Rights Leaflet by a member of the hospital staff which explains your legal rights.

### ***Can I be treated against my will?***

Under sections 5(2) and 5(4), you have the right to refuse treatment and your consent must be provided for any treatment to be given. There are some circumstances when treatment can be given without your consent. The first situation is where you do not have the capacity to make a decision about treatment and the treatment is in your best interests. The second situation is when the treatment needs to be given in an emergency to prevent serious harm to yourself or others.

### ***Who can discharge me?***

You will be automatically discharged from s5 once the detention time elapses if you have not been transferred onto a further section of the Mental Health Act.

### ***What sort of aftercare can I expect?***

It is unlikely that you will be discharged back home immediately after a s5(4) or s5(2). You will usually be admitted as either an informal patient (voluntary) or formal (patient under section) for a period of time. However, when you are discharged a care plan should be drawn up under the Care Programme Approach. Many hospitals also agree to contact you within 7-14 days of discharge to see how you are getting on.

[Top](#)

## 10. Community Treatment Orders

Supervised community treatment allows someone who has been detained under certain sections of the Mental Health Act 1983 to be discharged from hospital under a Community Treatment Order (CTO). Someone who has been kept in hospital under section 3 of the Act or someone diverted to hospital from the criminal justice system under certain sections of the Mental Health Act can be put on a CTO. Someone on a section 2 or a voluntary patient cannot be put on a CTO.

A CTO means that someone has to comply with certain conditions to stay in the community. It may be that they are recalled to hospital if they do not keep to these conditions or if their Responsible Clinician (the person in charge of their care) feels they need to be back in hospital.

More information can be found in our [‘Community Treatment Orders’](#) factsheet which is available to download for free from [www.rethink.org/factsheets](http://www.rethink.org/factsheets).

[Top](#)



FURTHER  
READING

## 11. Further reading

Additional information can be found in the following Rethink Advice & Information Service factsheets which can be downloaded from [www.rethink.org/factsheets](http://www.rethink.org/factsheets) or by contacting us directly at the details below.

- Discharge from detention under the Mental Health Act
- Nearest relative
- Community Treatment Orders (CTOs)
- Section 117 Aftercare
- Advocacy
- Complaining About the NHS or Social Services
- How to get legal advice and assistance

There is information about Tribunals available at the Tribunals Service website <http://www.mhrt.org.uk>.

[Top](#)



REFERENCES

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<sup>1</sup> s1(2A) Mental Health Act 1983 (MHA)

<sup>2</sup> s1(3) MHA

<sup>3</sup> South London and Maudsley NHS Foundation Trust. *The Maze, A Practical Guide to the Mental Health Act 1983 (Amended 2007)*. London: CPI William Clowes Beccles; 2010

<sup>4</sup> s11(4) MHA

<sup>5</sup> Department of Health. *Mental Health Act 1983 Code of Practice*. UK: TSO (The Stationery Office); 2008

<sup>6</sup> S58 MHA

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## Rethink Advice & Information Service

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quality of life for everyone  
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