The Mind guide to the Mental Health Act 1983

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This booklet sets out the main sections of the Mental Health Act 1983 and outlines your rights if you are under those sections. It aims to help you, or somebody who is helping you, to understand how the Act affects you and what you can do to protect your rights.

When we write about the Mental Health Act 1983 in this guide, numbers of the relevant section or part of the Act will be shown in blue. You will also find a glossary of legal and professional terms that you will come across in this booklet, on pp. 26-29.
Introduction

The vast majority of people receiving treatment in psychiatric wards are in hospital on an informal basis and have usually agreed to come into hospital – they are called informal patients or voluntary patients.

About a quarter of people, however, are in hospital without their agreement. This is because they have been ‘sectioned’ (or ‘detained’) under the Mental Health Act 1983. They are called formal patients. If you are in hospital as a formal patient you will not be free to leave and will lose some other important rights available to informal patients.

You will find more information about the difference between formal patients and informal patients in other sections of this booklet, but the majority of this booklet focuses on formal patients.
Compulsory admission to hospital: part 2 of the Act

Under the Mental Health Act, if you have a “mental disorder” (see ‘Glossary’), you can be admitted to hospital against your wishes (becoming a formal patient) provided the processes in the Act are followed. Part 2 of the Act is a group of sections that covers your rights if this happens to you.

If you are detained in hospital, it is important to seek legal advice so that you can be sure that the hospital has taken the right procedures and you are detained legally. (For mental health solicitors and advice, see Community Legal Advice and The Law Society in ‘Useful contacts’ on p. 30.)

Who can apply to detain me in hospital?

The Mental Health Act 1983 gives approved mental health professionals (AMHPs) (see ‘Glossary’) the power to make an application to admit you to hospital under a section of the Act if they consider it necessary and the best way of ensuring you receive the right care and treatment.

Before doing this, the AMHP must interview you and be satisfied that detention in hospital is, given all the circumstances, the most appropriate way of providing the care and medical treatment you need. They must then make the application for admission within 14 days of the interview.

Your nearest relative (see ‘Glossary’) also has the right to apply for you to be detained under the Act but, for practical reasons, the AMHP usually makes the application, which is what the Mental Health Act Code of Practice advises.

If your AMHP is making the application, they must consult your nearest relative. If the AMHP is applying to detain you under section 2, your nearest relative can give their view, but even if they object to the section 2, they cannot stop the section from going ahead. However, if the AMHP is
applying to detain you under section 3 and your nearest relative objects, the section 3 cannot go ahead. See ‘What are the differences between sections 2 and 3?’ on p. 7.

**What happens when I am detained in hospital?**

Usually two doctors will examine and assess you – not necessarily at the same time – and complete recommendations to confirm that, in their opinion, you fit the criteria for being sectioned under the Act. These are set out in ‘When is it legal to section me?’, opposite.

The Act gives the professionals detaining you (usually an AMPH and two doctors) the power to take you to the hospital that has agreed to accept you as a detained patient. When you are at the hospital, you will then be admitted onto a ward.

You will then remain in hospital while your section lasts, and will be seen and treated by the care team led by your responsible clinician (RC) (usually a doctor), until you are discharged by your RC or other professionals, such as the hospital managers (see ‘Glossary’).

**Which section will I be detained under?**

If you have not been sectioned before, or you have not been referred to the mental health professionals in your area before, it is more likely that you will be sectioned under a section 2, as this section is usually used to assess someone. However, treatment may follow the assessment. You should be asked to give consent to treatment, but even if you refuse, you can still be given treatment under section 2 if the RC considers that it is appropriate treatment and it is necessary to give it to you to improve your condition or stop it from getting worse.

If the doctors are clear that treatment is needed right away, you may be admitted to hospital immediately under section 3. If you are already in hospital under section 2, you can be re-assessed and transferred onto a section 3 without leaving hospital.
There are other sections that may be used to detain you without your consent, which are described in later sections of this booklet.

**When is it legal to section me?**
If you are being sectioned under section 2, the Act says that two doctors, after examining you, must confirm that:

- (a) you are suffering from “a mental disorder of a nature or degree that warrants detention in hospital for assessment” (or assessment followed by medical treatment) for at least a limited period; and
- (b) you ought to be detained in the interests of your own health or safety, or with a view to the protection of others.

If you are being sectioned under section 3, the Act says that two doctors, after examining you, must confirm that:

- (a) you are suffering from a “mental disorder of a nature or degree” that makes it appropriate for you to receive medical treatment in hospital; and
- (a) “appropriate” medical treatment is available for you; and
- (c) it is necessary to detain you for your own health or safety, or for the protection of others, that you receive such treatment and it cannot be provided unless you are detained under this section.

**Can I challenge the decision to section me?**
It can be difficult to challenge the doctors’ opinion at the time you are being sectioned, but the Act provides several ways of getting discharged from the section once you are admitted to hospital (see p. 9).

**What are the differences between sections 2 and 3?**
The main difference in the legal requirements for detaining you under section 3, is that “appropriate treatment” must be available to treat your mental health condition, and that you are being detained to receive medical treatment in hospital.

There are other important differences between the two sections.
The AMHP must consult your nearest relative before sectioning you, if you are being admitted under section 2 or section 3. However, your nearest relative cannot prevent you from being admitted under section 2. They can prevent a section 3 going ahead, if they object to it. The section 3 can then only go ahead if the AMHP applies to the County Court for an order “displacing” your nearest relative or taking their powers away from them. If the judge agrees to “displace” your nearest relative, the section 3 application can then go ahead.

The Act also says that the AMHP can go ahead with the application without consulting your nearest relative if it is not “reasonably practicable” to consult them. This might happen if the AMHP cannot find them within a reasonable time, or does not know who they are. If this happens, it is important to make sure, especially if you are detained under section 3, that a legal adviser checks your section papers to explain to you what they say, that they have been completed as the law requires, and that all the right procedures have been followed and your detention is lawful.

How long can I be kept in hospital under a section 2 or 3?
Under section 2, the longest you can be detained for is generally 28 days. However, if there is an application to displace the nearest relative in progress (see above), then it may be extended. If you no longer satisfy the legal requirements for being detained (see p. 7), your Responsible Clinician (RC) can decide to discharge you from detention earlier than 28 days.

However, your RC and AMHP may decide that you should be detained under section 3 (for immediate treatment), and the AMHP would then apply for the section 3 admission before the end of the 28 days.

If you are under section 3, you can be detained for up to 6 months at first. Again, this can be shorter, if your RC decides that you no longer satisfy the legal requirements for being detained.

However, if your RC considers that you need to have treatment under section 3 for longer than 6 months, they can renew the section for
another six months, then again, for one year at a time, by sending a report to the hospital managers under section 20 of the Act. They can do this if you still meet the legal requirements for being detained under section 3.

As part of this process, your RC will confirm that, in their opinion, appropriate medical treatment is available to treat your mental health condition. Your RC must also consult another person of a different profession who has been professionally involved in your treatment, and ask them if they agree that your section 3 ought to be renewed.

How can I be discharged from detention under section 2 or 3?
You can:

• ask your RC to discharge you. Your RC must discharge you if the medical conditions that justified your admission under the Act no longer apply.
• ask for a meeting with the hospital managers and ask them to consider discharging you.
• ask your nearest relative to discharge you by giving the hospital managers at least 72 hours' notice in writing. Once this is done, provided your RC does not object, your nearest relative can discharge you and take you from where you are being detained. However, the RC can stop your nearest relative from discharging you by making a report to the hospital managers before the 72 hours are up, that in his or her view, you would act in a manner dangerous to yourself or others.
• apply to the Mental Health Tribunal (MHT) (see ‘Glossary’) to be discharged. You will be able to get legal aid to pay for a solicitor to help you with your appeal to the tribunal and during the hearing. It is your right to have legal aid for the tribunal, no matter what your income or how much money or property you have.

When should I apply to the Mental Health Tribunal?
If you are detained under section 2, you should apply to the tribunal within 14 days of being detained; under section 3, apply once at any time within your first six months.
If your RC renews your section 3, you have the right to apply again during your second 6 months of detention. If your section is renewed again, you then have the right to apply once during each 12 months of further detention.

If your nearest relative gives notice that they wish to discharge you from section 3 and your RC prevents them from discharging you by making a report to the hospital managers, your nearest relative can also apply to the MHT for you to be discharged. But they must apply within 28 days of your RC making their report to the hospital managers.

If you do not apply to the Mental Health Tribunal:
- in the first six months of detention, your case will be referred automatically to the tribunal, without you having to apply
- after that, your case will be referred automatically every 3 years if it has not gone to a tribunal
- if you are under 18, it will go automatically to the tribunal after one year, if you have not applied yourself.

For further information, see Mind rights guide: discharge from hospital.

Can I be allowed to leave the ward if I have a good reason?
Your responsible clinician (RC) has the power to allow you to leave the ward and the hospital for short periods of time, but they may ask you to keep to certain conditions, such as returning within a certain time (section 17) see Mind rights guide: community care and aftercare.

When can I be detained under section 4 of the Act?
Section 4 is used less often than sections 2 and 3, and only for emergency cases. It may be used so that your mental health condition can be assessed in a hospital setting. It is like a section 2 admission but can only last for 72 hours or less. The Act says that only one doctor has to confirm that:
(a) it is of “urgent necessity” for you to be admitted and detained under section 2; and
(b) waiting for a second doctor to confirm the need for you to be admitted under section 2 would cause “undesirable delay”.

The application for section 4 can be made by an AMHP or your nearest relative, but whoever applies must have seen you within the previous 24 hours.

**What are my rights if I am detained under section 4?**

If you have not been admitted to hospital within 24 hours of your medical examination or the application to detain you under section 4 (whichever is the earlier), the section 4 application is no longer valid and the hospital authorities must discharge you.

You cannot be treated for your mental health condition under section 4 without your consent, although in emergencies, emergency treatment and care can be given to you.

Your RC or the hospital managers can discharge you from section 4 detention. Your nearest relative cannot. You do not have the right to apply to a tribunal to discharge you from section 4 detention.

Your RC cannot apply to extend your detention under section 4, but they may decide that you need to be detained in hospital for longer than 72 hours, and that possibly you need to be treated in hospital without your consent. This can only happen if you are then sectioned under a section 2. The AMHP (or your nearest relative) has to apply for you to be sectioned under section 2 before the section 4 ends (within 72 hours). A second doctor will then examine you and sign the section 2 papers.
If I am in hospital already as a voluntary patient, can I be detained?
Yes, Section 5 may apply to you if you are already in hospital as an informal (voluntary) patient.

Normally, if you have a mental health condition and are having treatment in hospital but are not under a section of the Mental Health Act, you have exactly the same rights as a person being treated for a physical illness and you should be free to leave the hospital or the ward if you choose.

However, the professionals have powers under section 5 of the Act that can limit that choice. They can be used if the medical team has concerns that you need further treatment, possibly without your consent.

One way this can happen is that a doctor or other approved clinician in charge of your treatment can detain you for up to 72 hours by reporting to hospital managers that an application for admission to hospital under the Act “ought to be made”, even if you do not wish to be sectioned. Even if you came into hospital for treatment for a physical problem and not a mental health problem, the clinician can still apply to detain you.

A nurse qualified and trained to work with people with mental health conditions or learning disabilities can also detain you if you are having treatment “for mental disorder” (see ‘Glossary’) in hospital as an informal patient. The nurse can detain you for up to six hours, or until a doctor or approved clinician with authority to detain you arrives, whichever is earlier.

When these powers are used, you are no longer free to leave and will need to remain in hospital for assessment to see if you need to be detained under section 2 or section 3.

When do police become involved?
Under section 135, a warrant from a magistrate can be used to enter any premises where a person is believed to be and take that person to “a place of safety” without their consent.
A police officer with a doctor and AMHP, after using the warrant to get in, can take you from your home or some other private place, if there is “reasonable cause to suspect” that, if you are suffering from “mental disorder”, you are being “ill-treated” or “neglected” or not under “proper control”, or unable to care for yourself and living alone. You must be released from the place of safety if you are not detained under the Act in a hospital within 72 hours.

If you are in a public place, section 136 can be used to take you to a place of safety, usually a hospital, if it appears to a police officer that you are suffering from “mental disorder” and “in immediate need of care or control”. The Mental Health Act Code of Practice states that a police station should be used as a place of safety only on an “exceptional basis”. You must be released if you are not detained in a hospital, under the Act, within 72 hours.

You may be taken to a police station if it is the only designated place of safety in the area, but it does not mean you have committed a crime. The aim of sections 135 and 136 is for you to be examined by a doctor and interviewed by an AMHP as quickly as possible so that any necessary arrangements can be made for your treatment and care.

**What is Guardianship, and when will it be used?**

Guardianship under the Mental Health Act is used to encourage people who live in the community to use services or to live in a particular place. It is often used with people who lack the mental capacity to avoid danger or being exploited. Section 37 of the MHA allows the courts to appoint a guardian to you, if you have been charged with a crime. However, most guardians are appointed under section 7 of the MHA, following an application by an AMHP.

For further information on guardianship, see *Mind rights guide: community care and aftercare.*
Compulsory admission to hospital by a criminal court
part 3 of the Act

Can I be sectioned by a criminal court?
This is covered in Part 3 of the Mental Health Act, for example, if the court places you under a section 37 hospital order.

The Crown Court can make a hospital order before or after you have been convicted of a crime. The Magistrates' Court can also place you under a hospital order, but only when you have been convicted of an offence that could be punishable with a prison sentence (such offences include manslaughter, but not murder).

The Magistrates' Court can make a hospital order without recording a conviction against you if you are suffering from a “mental disorder” and the magistrates are satisfied that you have committed the act as charged.

The Act says that the court can make a hospital order on evidence from two doctors that:
(a) you are suffering from a “mental disorder” of a “nature or degree” that makes detention for medical treatment appropriate; and
(b) appropriate medical treatment is available for you; and
(c) taking into account all the relevant circumstances, including your past history and character and alternative methods of dealing with you that might be available to the court, it considers that a hospital order is the most suitable option.

Section 37 can last for up to six months, and then can be renewed for a further six months, then for one year at a time.
How can I be discharged from a hospital order?
You can:
• ask your responsible clinician to discharge you
• ask for a meeting with the hospital managers and ask them to discharge you
• apply to a Mental Health Tribunal. You (or your nearest relative) can apply to a tribunal once between 6 and 12 months after your hospital order has been made, and then, if it is renewed, once during each period of one year. Your case will automatically be referred to a tribunal when three years has passed since a tribunal last considered it (after one year if you are under 18).

What happens if the court places me under a restriction order?
The Act says that the Crown Court that has made your hospital order under section 37 can also place you under a section 41 restriction order (which has stricter conditions of discharge), if the court thinks:

(a) this is necessary to protect the public from “serious harm”; and
(b) at least one of the doctors who made recommendations for the hospital order you have been placed under gave their evidence by speaking at your trial.

A Magistrates' Court cannot put you under a restriction order, but it can commit you (send you) to a Crown Court so that it can place you under a section 41 restriction order.

The restriction order can be made to last for any length of time.

If you are on a restriction order, you are known as a restricted patient.
How can I be discharged from a restriction order?
You can be discharged from a restriction order usually by either:
- the Secretary of State for Justice or
- a Mental Health Tribunal (MHT). If you are a restricted patient, you (but not your nearest relative) can apply to a tribunal once between 6 and 12 months after you have been placed under a restriction order, and then once during each period of one year of further detention. The Secretary of State for Justice may refer your case at any time to the tribunal and has a duty to do so if the tribunal has not considered your case within the last three years.
- also your responsible clinician, with the consent of the Secretary of State for Justice.

Are there are other sections that a criminal court can use?
Other sections of the Act cover detention for: remand to hospital for a medical report (section 35); and remand to hospital for treatment (section 36), under an interim hospital order (section 38) and under a hospital and limitation direction (section 45A).

For further information on mental health and the court system, see Mind rights guide: mental health and the courts, and Mind rights guide: mental health and the police.
Consent to treatment
part 4 of the Act

When can I be treated for my mental health problem without my consent?
The Act has a group of sections, Part 4, that explains when you can be treated without your consent if you are detained. If you are concerned about your treatment, it is a good idea to seek advice about your rights from a solicitor or legal adviser (see ‘Useful contacts’ section).

It is important to remember that you can be treated with medication without your consent for 3 months from the date of your detention if you are under certain sections of the Act, such as sections 2 and 3. However, if you are still not consenting after that time, the authorities have to get a recommendation from a ‘second opinion appointed doctor’ (SOAD – see ‘Glossary’) that the treatment is “appropriate” and should continue. You should also be asked whether you agree to the treatment first, but you might not be able to stop it happening.

If you have been detained under certain sections of the Act (you are a formal patient), you are in a very different position in law from someone who is being treated in hospital but has not been detained (an ‘informal’ patient). An informal patient and a patient in hospital being treated for a physical illness have the right to refuse treatment. As a formal patient, you should be asked whether you consent to treatment, but even if you refuse, the Act still allows you to be treated without your consent in certain circumstances.
Does this apply to all types of medical treatment?

Part 4 of the Mental Health Act applies to:

- treatments for mental disorder
- all formal patients – except those detained under sections 4, 5, 35, 135 and 136, and those under guardianship or conditional discharge

see Mind rights guide: community care and aftercare. These patients have the right to refuse treatment, as have informal patients, except in emergencies.

Section 58 is the section that is likely to be relevant to you. It applies to treatments named in Department of Health (DH) regulations. Medication can be given to you without your consent for up to 3 months after your admission, without a second opinion. After that, it can only be given under procedures laid down in section 58.

(a) The Act says that:
   any treatment (for mental disorder) can be given without your consent,

(b) but
   under section 58, certain treatments, including medication for mental health problems, can only continue to be given to you after 3 months if:
   (i) you consent; or
   (ii) an independent doctor appointed by the Care Quality Commission or Healthcare Inspectorate Wales (the second opinion appointed doctor or SOAD) confirms that treatment should be given to you. Before doing so, they must consult two people: one a nurse and the other neither a nurse nor a doctor, who have been concerned with your treatment.
Can I ever be given ECT without my consent?
Section 58A says that ECT (electroconvulsive therapy) can be given with your consent, or if you lack capacity to make a decision about ECT, it can be given with the approval of a SOAD. Your RC and other health professionals will assess whether you have the capacity to consent to or refuse ECT. (However, see p. 20, ‘Do I have the right to refuse treatment in an emergency?’)

If you are a “qualifying patient” (see Independent Mental Health Advocates in ‘Glossary’) you are entitled to help from an IMHA if it is possible you may be given ECT (and other section 58A treatments, such as medication associated with ECT).

If you are an informal patient under 18 in England, you are also entitled to help from an IMHA if it is possible you may be given ECT or any other treatments that can or will in the future be authorised under section 58A.

In Wales, if you are an informal patient you will have the right to help from an IMHA in every case, even if you are over 18.

What are my rights if I am having neurosurgery?
You can be given neurosurgery under section 57 with your consent. Under section 57, you can only be given certain very serious treatments such as neurosurgery and any other treatments specified in DH regulations if:
(i) you consent; and
(ii) a multidisciplinary panel appointed by the Care Quality Commission or Healthcare Inspectorate Wales confirms that your consent is valid; and
(iii) the doctor on the multidisciplinary panel signs a certificate to confirm that the treatment should be given to you. Before doing so, they must consult two people: one a nurse and the other neither a nurse nor a doctor, who have been involved in your treatment.
If you are assessed as lacking the capacity to consent to neurosurgery, section 57 says that you cannot have neurosurgery.

As these treatments covered by section 57 are very serious and should be used only in limited circumstances, this section applies to all formal and informal patients. Also if you are detained under certain sections of the Mental Health Act or are a “qualifying patient” for some other reason (see ‘Glossary’ on Independent Mental Health Advocates), you have the right to help from an IMHA where there is a possibility of neurosurgery for “mental disorder” (or other treatments that may be specified in DH regulations).

If you are an informal patient, you will also be entitled to help from an IMHA if neurosurgery is a possibility. However, if you live in England, unlike formal patients, you will not be able to ask the IMHA for help about other matters or to make a complaint. In Wales, all patients, whether formal or informal, are entitled to help from an IMHA.

For further information, see Mind’s online booklet Making sense of neurosurgery for mental disorder.

**Do I have the right to refuse treatment in an emergency?**

You need to know that in an emergency, under section 62, the law allows any treatment for “mental disorder” to be given to you without your consent if you are a patient, but only under restricted conditions if a treatment is “irreversible” or “hazardous”. This could happen where treatment is “immediately necessary” to save your life or “prevent serious deterioration” of your condition. It should not include neurosurgery, but could include ECT.
Supervised Community Treatment (SCT)
part 4A of the Act

Your rights around Supervised Community Treatment are set out in Part 4A of the Act. Being under Supervised Community Treatment means that you have been placed on a Community Treatment Order (CTO).

What is a CTO?
A CTO is a power given to your RC under the Mental Health Act to place certain conditions on you which you must follow when you have left hospital. It is meant to ensure that you receive the right treatment once you have left hospital and it means you have to keep in touch regularly with your mental health team and you have to keep to certain conditions.

Your RC applies for a CTO to your mental health trust or the authority detaining you before your detention comes to an end. An AMHP must agree that you should be under a CTO and that you should be able to be recalled to hospital and detained there.

If you are detained under sections 3, 37, 47, 48 and 51, you may leave hospital on a CTO when your detention ends.

You cannot be put under a CTO if:
- you are under one of the following sections of the Act: 2, 4, 5, 135, 136, 35, 36, 38, 44 or 45A.
- you are a restricted patient on a section 37 hospital order with a section 41 restriction order
- you are a prisoner transferred to hospital under sections 47 or 48 who is also on a restriction direction under section 49.
When is it legal to put me on a CTO?
The Act says that a CTO may be made under section 17A (5) if:
(a) you are suffering from a “mental disorder” of a “nature or degree” that makes it appropriate for you to receive medical treatment;
(b) it is necessary for your health or safety or for the protection of others that you should receive such treatment;
(c) such treatment can be provided without your continuing to be detained in a hospital (although this does involve the possibility of being recalled to hospital from the community);
(d) it is necessary for the responsible clinician to be able to exercise his or her power under section 17E(1) to recall you to hospital;
(e) appropriate medical treatment is available for you.

What do I have to do if I am on a CTO?
The Act says that your CTO has to include certain conditions. For example, you will be under a condition to make yourself available for certain medical examinations set out in the Act (section 17B (3)), such as being prepared to talk to a SOAD (second opinion appointed doctor). If you do not attend medical examinations that are a part of your CTO conditions, it may mean you are more likely to be recalled to hospital, where you can be examined and possibly given treatment without your consent.

You may be asked to keep to other conditions, and if you do not keep within these conditions, this could also be a reason for your RC and mental health team to consider recalling you to hospital, particularly if they think that this could cause an increased risk to you or someone else.

Before your RC uses the power to recall you, you should be given a chance to explain what has happened and s/he should consider whether you have a valid reason for not keeping to any of your CTO conditions. It may be possible for you to return to hospital as a voluntary (informal) patient, without having to be recalled.
Can I refuse medical treatment for my mental health condition if I am on a CTO?
Taking your medication may be one of the conditions of your CTO, but a CTO does not make it lawful to force you to have medical treatment without your consent when you are living in the community. This can only happen if you are recalled to hospital.

If you are taken back to hospital after your RC has recalled you from the community, you may be kept in hospital for up to 72 hours (section 17F(7)). After this time, either you must be released back into the community or the CTO is “revoked” (ends) (section 17F(4)). If your CTO is revoked, this means that you are again detained in hospital under your original section as you were before your CTO and your treatment can continue in hospital, without your consent if necessary.

How long will my CTO last and how can it end?
Your CTO can at first be made to last for any time up to six months. After that time, you can no longer be recalled, unless your CTO has been extended. Your RC may extend your CTO for 6 months initially, and then for periods of one year at a time.

A CTO may end if:
- Your RC revokes (ends) it, because they feel you fit the legal criteria to be detained in hospital again – this means your original detention section is ‘live’ again.
- Your RC, the hospital managers, your nearest relative or the mental health tribunal discharge you from the CTO because they feel you no longer require it. If this happens, you can no longer be recalled to hospital.

The hospital managers have a duty to refer you to the mental health tribunal for discharge from a CTO, six months after the date of your original detention in hospital if you have not applied to the tribunal yourself by then. For further information see Mind rights guide: community care and aftercare.
Other rights when detained in hospital

Can I still vote?
If you are in hospital as an informal patient you have the right to vote if you have entered your last home or non-hospital address on the electoral register, or an address where you would be if you were not in hospital.

If you are detained in hospital as a formal patient you can vote, if you have registered on the electoral register as living either at your hospital address or at a recent home address. However, if you have been sent to hospital by a criminal court, or transferred from prison, you cannot vote – although this may change in the future.

What information can I expect to be given when I am detained in hospital (or on a CTO)?
The Act says you have the right to be given certain information. Under section 132, the hospital managers have a legal duty to give you information on:

- the section you are detained under, or of your CTO
- your right to apply to a MHT
- your right to be discharged by your responsible clinician, the hospital managers and, if this applies to you, your nearest relative
- the consent to treatment rules and when you can be given treatment against your wishes
- the rules about getting correspondence in hospital
- how the Care Quality Commission or the Healthcare Inspectorate Wales can help you if you are detained in hospital, and how you can make a complaint.

The hospital managers must also tell your nearest relative when you are due to be discharged, unless you or your nearest relative have given instructions that this information should not be given to your nearest relative.
Will I have the right to any support or services after I leave hospital?

You should receive aftercare after you have left hospital. Your aftercare planning should begin before you leave hospital and you should be invited to a discharge meeting. This should involve your RC and other professionals who have been caring for you e.g. nurses, and members of the team who will be providing your care in the community, e.g. your GP, your carer (if you have one) and your IMHA (or other mental health advocate).

If you have applied to the Mental Health Tribunal, the discharge meeting should take place before your hearing to make sure that the tribunal panel has all the relevant information about your situation and needs, and that any services in your aftercare plan can be put in place if the tribunal decides to discharge you.

Under section 117, health authorities and local social services have a legal duty to provide aftercare for people who have been detained on sections 3, 37, 47 or 48, but who have left hospital. The duty to provide aftercare also applies if you are under a CTO. If you have been in hospital on one of the sections mentioned above, you should not have to pay for your aftercare services. For more information about your rights to aftercare and care in the community, see Mind rights guide: community care and aftercare.
Approved clinician
A mental health professional who has been approved, for the purposes of the Mental Health Act, by the Secretary of State (England) or by Welsh ministers (Wales). Approved clinicians may be doctors or mental health professionals such as psychologists, nurses, occupational therapists and social workers. Some decisions under the Mental Health Act can only be taken by approved clinicians.

Approved mental health professional (AMHP)
May be social workers, nurses, occupational therapists or psychologists who have been approved by a local social services authority to carry out certain functions under the Mental Health Act.

Hospital Managers
Also known as Mental Health Act managers, because they have certain duties under the Act and are responsible for administering the use of the Act in the hospital e.g. hearing patients’ applications to be discharged.

Independent Mental Health Advocate (IMHA)
An advocate specially trained to help you to find out your rights under the Act and help you while you are detained, if you are a “qualifying patient”. You are a “qualifying patient” if you are detained in hospital under a section of the Act, but not if you are under sections 4, 5, 135 and 136. You also qualify if you are under MHA guardianship, conditional discharge, and Community Treatment Orders (CTOs), or are discussing having certain treatments, such as ECT. In Wales, informal patients are also “qualifying patients”.

Who’s who
Nearest relative (NR)
Section 26 of the Mental Health Act 1983 sets out a list of people who may be considered as your nearest relative, and the person who is highest on the list is your NR. The list is in strict order and starts with spouse/co-habitee, then children, then parents. The Nearest Relative has certain rights and powers in relation to admission under the MHA, including the right to be consulted if you are going to be sectioned under section 2 or 3. It is possible to go to court to ‘displace’ your nearest relative if you object to them being your nearest relative, or for them to nominate someone else to act on their behalf.

Responsible clinician (RC)
They are the approved clinician (see opposite) with overall responsibility for your care and treatment while you are under the Mental Health Act. Certain decisions, such as placing a detained person on supervised community treatment, can only be taken by the responsible clinician. All responsible clinicians must be approved clinicians.

Second Opinion Appointed Doctor (SOAD)
An independent doctor appointed by the Care Quality Commission in England or by the Healthcare Inspectorate Wales, whose approval is required for certain forms of medical treatment under the Mental Health Act 1983
Definitions

Appropriate treatment
References to “appropriate medical treatment” or “appropriate treatment”, when talking about a person suffering from mental disorder, are references to medical treatment which is appropriate in his or her case and takes into account the nature and degree of the mental disorder and all other circumstances of his or her case.

Medical treatment
When the Mental Health Act mentions medical treatment for mental disorder, this means medical treatment which has the purpose of relieving the mental disorder or one or more of its signs or symptoms, or stopping it from getting worse. It includes nursing, psychological intervention and specialist mental health habilitation (learning skills), rehabilitation (relearning skills) and care.

Mental Disorder
When the Mental Health Act talks about mental health problems and conditions that may justify a person being sectioned, it frequently uses the term “mental disorder”.

Mental disorder is defined in section 1 of the Act as “any disorder or disability of mind”. It can include any mental health problem normally diagnosed in psychiatry, and also learning disabilities. However, for the purposes of section 1, those suffering from learning disability are only considered to have a mental disorder if their disability is “associated with abnormally aggressive or seriously irresponsible conduct”.

The Mind guide to the Mental Health Act 1983
Organisations

Care Quality Commission (CQC)
Regulates and improves the quality of health and social care and looks after the interests of people detained under the Mental Health Act in England. It can also investigate complaints from detained people.

Healthcare Inspectorate Wales
Regulates and improves the quality of health and social care and looks after the interests of people detained under the Mental Health Act in Wales.

Mental Health Tribunal (MHT)
Independent panels that decide whether a formal patient detained under sections 2, 3, 37 and certain other detention sections should be discharged or not. They will normally only consider circumstances at the time of the hearing and not whether you should have been detained in the first place. The panel normally includes a legally qualified chairperson, a psychiatrist and a ‘lay person’ who has appropriate experience and qualifications in mental health matters. The tribunal can decide about suitable aftercare and make recommendations about matters such as hospital leave, transfer to another hospital, guardianship and CTOs. For more information, see Mind rights guide: discharge from hospital.
## Useful contacts

**Mind Legal advice service**  
PO Box 277, Manchester M60 3XN  
tel. 0300 466 6463 (Monday to Friday, 9.00 am to 5.00 pm)  
email: legal@mind.org.uk  
For any aspect of mental health law.

**Action for Advocacy**  
The Oasis Centre, 75 Westminster Bridge Road, London SE1 7HS  
tel. 020 7921 4395  
web: actionforadvocacy.org.uk  
Help to find a local advocate or advocacy group.

**Care Quality Commission (CQC)**  
Citygate, Gallowgate, Newcastle upon Tyne NE1 4PA  
tel. 03000 61 61 61  
web: cqc.org.uk  
For complaints about anything that may have happened during your detention

**Community Legal Advice**  
tel. 0845 345 4 345  
Minicom: 0845 609 6677  
web: direct.gov.uk (search ‘CLA’)  
Details of mental health solicitors and other organizations. Text 'legalaid' and your name to 80010.

**Healthcare Inspectorate Wales**  
Review Service for Mental Health, Bevan House, Caerphilly Business Park, Van Road, Caerphilly CF83 3ED  
tel. 029 2092 8858  
email: rsmh@wales.gsi.gov.uk  
web: hiw.org.uk  
For complaints about your detention

**The Law Society**  
tel. 020 7242 1222  
web: law society.org.uk  
For details of mental health solicitors

**The Law Society Office in Wales (Cymru)**  
The Capital Tower, Greyfriars Road, Cardiff CF10 3AG  
tel. 029 2064 5254  
web: law society.org.uk

**Mental Health Tribunal (England)**  
First-tier Tribunal (Mental Health), PO BOX 8793, 5th Floor, Leicester LE1 8BN  
tel. 0300 123 2201

**Mental Health Tribunal for Wales**  
Crown Buildings, Cathays Park, Cardiff, CF10 3NQ  
tel. 029 2082 5328
Useful contacts

Revolving Doors Agency
4th Floor, 291-299 Borough High Street, London SE1 1JG
tel. 020 7407 0747
web: revolving-doors.org.uk
For people with mental health problems in contact with the criminal justice system

UK Advocacy Network (UKAN)
c/o 18 Beulah View, Leeds LS6 2LA
web: u-kan.co.uk
Coordinating group for user-led patients' councils, advocacy projects and mental health forums.

Further information

To read or print Mind's information booklets for free, visit mind.org.uk or contact Mind infoline on 0300 123 3393 or at info@mind.org.uk

To buy copies of Mind's information booklets, visit mind.org.uk phone 0844 448 4448 or email publications@mind.org.uk

This booklet was written by Joanna Sulek

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web: mind.org.uk
We're Mind, the mental health charity for England and Wales. We believe no one should have to face a mental health problem alone. We're here for you. Today. Now. We're on your doorstep, on the end of a phone or online. Whether you're stressed, depressed or in crisis. We'll listen, give you advice, support and fight your corner. And we'll push for a better deal and respect for everyone experiencing a mental health problem.

Mind Infoline: 0300 123 3393
info@mind.org.uk
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