

Introductory guide

Your rights  
when detained  
under the  
Mental Health  
Act in Wales

Civil sections

**For more information please contact:**

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Please note: if you are detained under **sections 35, 36, 37, 37/41, 38, 45A, 47, 47/49, 48 or 48/49**, please look at the introductory guide called **'Your rights when detained under the Mental Health Act in Wales – Forensic sections'** if you have access to the internet, or ask hospital staff or health professionals to print it out for you.

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# About this guide

This introductory guide is for people detained under **sections 2 and 3 of the Mental Health Act**, or people who are in hospital as a **voluntary patient**.



The **Mental Health Act** is a law that protects the rights of patients who are being detained in hospital.



A **voluntary patient** (also called an informal patient) is someone who is in hospital but isn't detained under the Mental Health Act.

This introductory guide **only** covers information about your rights when the decision to detain you in hospital is made.

**If you need someone to help you read or understand this document**, please ask health professionals for an advocate or a translator who can help you with that.

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In this document, we talk about what health professionals and others **must** do, what they **should** do and what they **may** do.

- If we say they **must** do something, this means that it is the law for them to do this.
- If we say they **should** do something, this means that this should happen and if it doesn't, you may be able to complain.
- If we say they **can / may** do something, this means that whether or not they do it will depend on the specific circumstances.

## Why am I being detained?

If you are **detained under section 2 or section 3 of the Mental Health Act**, this is because:

- you are showing signs of mental distress
- your health and safety or that of other people is at risk



**This may relate to your and other people's human right to life.**

- the best way for you to get the care and support you need is to be in hospital, and
- you haven't agreed to be in hospital of your own free will as a voluntary patient.



If you are a voluntary patient, you can leave hospital at any time. But, if health professionals are concerned about your safety or the safety of others, they can stop you from leaving for up to 72 hours.

The decision to detain you in hospital because of your mental health condition takes away your right to be free. **So it's important that it is done in a way that is legal.**



**This relates to your human right to freedom.**

## How should the decision to detain me be made?

For your detention to be lawful:

- An **approved mental health professional** must do an assessment. They must decide that your health and safety, or that of other people, is at risk because of your mental health condition. And that the only way you can receive the care and support you need is to be detained in hospital.



This may relate to your and other people's human right to life.

- The approved mental health professional must get the opinions of two doctors.
- The two doctors must both agree with the approved mental health professional that you need to be detained in hospital.



An **approved mental health professional** is a professional who is trained to work with the Mental Health Act but isn't a doctor. Most approved mental health professionals are social workers but they may also be a nurse, an occupational therapist or a psychologist.

The approved mental health professional **must speak to your nearest relative when you are being detained.**



Your **nearest relative** is a person in your family or a carer. It isn't the same as next of kin.

Your nearest relative has the right to:

- get information about your detention and your discharge
- object to you being detained under section 3
- be involved in your care and treatment, and
- discharge you from hospital.

**Your nearest relative has important rights and powers including to object to your detention** if you are being detained under section 3. So it is important that the approved mental health professional finds and talks to your nearest relative as soon as possible.

Health professionals should always communicate with you and your nearest relative in a way that you can understand. This might mean that they need to use an interpreter or sign language for example.



**This is so health professionals don't discriminate against you because of your nationality or because you are disabled (including if you have a learning disability or autism).**

## Your right to speak to an independent mental health advocate

### You and your nearest relative should be:

- given information about how to contact the **independent mental health advocate** service in writing **as soon as possible after you arrive in hospital**
- be able to meet with an independent mental health advocate **in private** so you can have confidential discussions.

**Independent mental health advocates are not doctors, nurses or other health professionals.** They are not involved in deciding whether or not you should stay in hospital.

### The independent mental health advocate must:

- help you understand your rights and other information about being detained, including how to appeal your detention
- support you to express your views and wishes to health professionals, or speak on your behalf if you want them to.

**The independent mental health advocate service is free and you must not be charged for this.**



**Independent mental health advocates** are there to help you understand your rights and other information about being detained. And what health professionals should do to make sure you are looked after. They can speak to health professionals on your behalf if you want them to. They can support you to attend meetings and make sure your views are heard. This helps make sure you are central to decisions being made about you.

# What can you or your nearest relative do if you think that you shouldn't be in hospital?

Your nearest relative can discharge you if they think that you shouldn't be detained in hospital. **They need to tell the hospital managers 72 hours before they want to do this.** And you can get help from an independent mental health advocate with the application process. Your **responsible clinician** can stop your nearest relative from discharging you if they think there may be a risk of you harming yourself or others.



The **hospital managers** are the people who are responsible for running the hospital.

They have important responsibilities under the Mental Health Act including making sure that you can access and understand information about your rights under the Mental Health Act as well as the Human Rights Act and the Equality Act where relevant.



Your **responsible clinician** is the person in charge of your care. This person does not

have to be a doctor, but sometimes a doctor is still required, for example, for recommendations for detention under the Mental Health Act. They can make decisions about whether you are well enough to leave hospital on leave or be discharged from hospital.

You or your nearest relative also have the right to appeal your detention to the **managers' discharge panel** or to the **mental health tribunal**.

For more information on how to do this, speak to an independent mental health advocate as soon as possible.

This is particularly important if you are detained under section 2 of the Mental Health Act. If you are detained under section 2, you'll only have 14 days to present your appeal to the Mental Health Tribunal.



**This relates to your human right to a fair trial**



The **managers' discharge panel** is a group of people who are responsible for making sure that the Mental Health Act is being used properly and that people are only detained when they should be. They can also make decisions about whether or not you should be discharged from hospital. They aren't employed by the hospital or by the NHS. This means the hospital and the NHS can't tell them what to say or do.



A **mental health tribunal** is a legal meeting where a group of people will decide if you still need to be detained in hospital. This group of people is called a panel.

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If you or your nearest relative think that the rules about your detention haven't been followed properly, you could also speak to a solicitor about challenging the decision in a court of law.

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### Fill out this part yourself

What signs of a mental health condition does the approved mental health professional say I am showing?

Do I agree with this?

**Yes**

**No**

If not, why not?

Do I agree that I am at risk of harming myself or others at the moment?

**Yes**

**No**

If not, why not?

Did the approved mental health professional asked me about friends and family to contact?	<b>Yes</b>	<b>No</b>
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Did the approved mental health professional contact my friends and family?	<b>Yes</b>	<b>No</b>
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If so, who?

Do I agree that I need go to hospital voluntarily?	<b>Yes</b>	<b>No</b>
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Do I feel that there is an alternative to me going to hospital?	<b>Yes</b>	<b>No</b>
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Have I discussed this with the approved mental health professional?	<b>Yes</b>	<b>No</b>
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If not, who can I tell?



The **Equality Act 2010** protects people from **discrimination** so that they have the same opportunities to do what they can.

**Find out more about the Equality Act on the Equality and Human Rights Commission website.**



The **Human Rights Act** is a law that protects your basic rights as a human being.

**Find out more about the Human Rights Act on the Equality and Human Rights Commission website.**



**Discrimination** means that you are being treated worse than other people because:

- of your age
- you are disabled, including when you have a learning disability or mental health condition
- of your religion or belief or because you don't have a religion
- you are of a different race, nationality or culture
- you are a man or a woman
- of your sexual orientation, e.g. if you are gay, lesbian, bisexual or heterosexual
- if you have undergone gender reassignment
- you are pregnant or you have a new baby

If you are disabled, **you may need extra help** to do the same things as people who are not disabled.



If you are disabled, organisations must make **reasonable adjustments** to meet your needs so you can access the same facilities and services as non-disabled people and have the same opportunities as others. For example:

- If you use a wheelchair, the hospital and the ward should make sure that everywhere you go in the hospital can be accessed by a wheelchair.
- If you have a learning disability that makes it difficult for you to communicate with others, you should be allowed to use personalised communication aids
- If you are autistic, you should be able to access sensory rooms or quiet spaces when you feel overstimulated and/or to get the help of a keyworker with expertise in autism.
- If you have a long-term health condition such as diabetes, you should continue to get the diet you need to keep you well.



[equalityhumanrights.com](http://equalityhumanrights.com)