

Introductory guide

Your rights
when detained
under the
Mental Health
Act in Wales

Forensic sections

For more information please contact:

Please note: if you are detained under **sections 2 or 3**, or if you are in hospital as a **voluntary patient**, please look at the introductory guide called '**Your rights when detained under the Mental Health Act in Wales – Civil sections**' if you have access to the internet, or ask hospital staff or health professionals to print it out for you.



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

About this guide

This introductory guide is for people detained under **section 35, 36, 37, 37/41, 38, 45A, 47, 47/49, 48 or 48/49 of the **Mental Health Act****.



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

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.

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 in hospital, this is because

- you are suspected of or have been convicted of a crime by a court
- you are showing signs of a mental illness, and
- the court thinks that you need to be in hospital for assessment or **treatment**.



Treatment is given to you by health professionals to improve your mental health. This can include things like:

- medication
- nursing care
- talking therapies – one to one or in a group
- art therapy, and
- complementary therapies (e.g. drama).

Which section of the Mental Health Act can I be detained under?

The courts can detain you in a mental health hospital using different sections of the Mental Health Act depending on:

- whether you are suspected of or have been convicted of a crime
- whether you are in hospital for an assessment or to receive treatment, and
- how much of a risk to other people the court thinks you are because of the crime you have committed.

Section 35 – The court uses this section to send you to hospital to be assessed. The court uses this section when they don't know very much about your mental health and want to know more. You might get treatment for your mental health while you are in hospital under section 35.

Section 36 – The court uses this section if they think you should be in hospital and receive treatment. They do this instead of sending you to prison on remand. They use this section when they already know that you will need treatment. If they are not sure if you need treatment or not, they will use section 35.

Section 37 – The court uses this section instead of sentencing you to prison. They do this when you have been convicted and they think you need treatment in hospital.

Section 45A - The court uses this section when you have been convicted and they think you need treatment in hospital. It is known as a hybrid order because the court also sentences you to prison at the same time. If your mental health improves and you no longer need to be in hospital, you will be sent to prison if your sentence has not run out.

Section 38 – The court uses this section when they want to know more about your mental health. They do this if they think you need treatment in hospital while you are being assessed.

Section 47 – This section is used if you are already serving a prison sentence. Two doctors will assess you if your mental health gets bad and you need to be in hospital for treatment. If you get better, you will be sent back to prison.

Section 48 – This section is used if you are in prison on remand or if you have been sentenced as a civil prisoner. Two doctors will assess you if your mental health gets bad and you need to be in hospital for treatment. If you get better, you will be sent back to prison. You may also have a restriction order placed on you. This will mean you are a **restricted patient**.



A **restricted patient** is a patient who has special controls put on them by the **Ministry of Justice**.

These are things like not being able to leave hospital unless the Ministry of Justice agrees.



The **Ministry of Justice** is a government department. They are responsible for courts, prisons and probation services.

You can have a restriction order placed on you if you are on:

- **section 37** – this is often called being on section 37/41
- **section 47** – this often called being on section 47/49
- **section 48** – this is often called being on section 48/49
- **section 45A** – all patients under section 45A are restricted patients.

The decision to detain you in hospital because of your mental health condition can take away your right to be free if you haven't yet been convicted of a crime. 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, the decision to detain you will need to be made by the following people.

Section 35 – The court and one doctor 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.

Section 36, 37, 38, 45A, 47, 48 – The court and two doctors must agree that you need to be detained in hospital to get your mental health assessed or treated.



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

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.



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.



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.

You can have a nearest relative if you are detained under sections 37, 47 or 48 without a restriction order. If you are detained under other sections or are a restricted patient, you can't have a nearest relative.

Independent mental health advocates are not doctors, nurses or other health professionals.

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.

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

If you don't think that you should be in hospital, you and your nearest relative (if you have one) may have the right to appeal your detention to the **managers' discharge panel** or to the **mental health tribunal**.



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.



This relates to your human right to a fair trial

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.



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



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 have autism, 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.



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