

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.

Key points

- **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 powers**
- **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**

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).

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*.

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.

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. If possible, one of the doctors should already know you.

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.

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 (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. 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.

** An Approved Mental Health Professional (AMHP) used to be known as an Approved Social Worker (ASW)*

4. Can I avoid being sectioned?

If you feel that you do not need to be sectioned, you should let the doctor 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. If you wish to have a friend or family member with you, 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.

5. Section 2

Section 2 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 Section 2 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 Section 2 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. Section 2 cannot be renewed but you may be transferred onto a section 3 (see below).

What are my rights on a section 2?

You should be given a Patient Rights Leaflet Number 6 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 can also ask for a list of mental health solicitors who will be able to advise and represent you. People detained under the Mental Health Act are entitled to free legal representation at Tribunals under the Legal Aid scheme. 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 Section 2, 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 Section 2 by:

- The doctor responsible for your care in hospital (Responsible Clinician)
- The Mental Health Act managers
- Your Nearest Relative

- 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.

6. Section 3

Section 3 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 Section 3 if you are well known to the psychiatric services and there is little need for assessment. Alternatively, you may be detained under Section 3 following an initial admission under Section 2.

How is a section 3 carried out?

An application for admission to hospital under a Section 3 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 Section 3 can be renewed for a further period of 6 months, and then for further periods of one year at a time.

Detention under Section 3 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 Section 3 is due to expire.

What are my rights on a section 3?

You should be given Patient Rights Leaflet Number 7 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, once during the second six months and then once during each period of one year. You can also ask for a list of mental health solicitors who will be able to advise and represent you. People detained under the Mental Health Act are entitled to free legal representation at Tribunals under the Legal Aid scheme. 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 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 Section 3 you do not have the right to refuse treatment. 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 Section 3 by:

- The doctor responsible for you care in hospital (Responsible Clinician)
- The Mental Health Act managers
- Your Nearest Relative (although this can be overruled by the registered medical officer, 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.

7. Section 4

Section 4 is used in emergency situations where, were it not an emergency, detention under Section 2 would ordinarily be used. Section 4 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 section 4 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 section 4 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 Section 4 should be converted into a Section 2.

What are my rights on a section 4?

You should be given Patient Rights Leaflet Number 4 by a member of the hospital staff which explains your legal rights. You have the right to appeal against detention to a Tribunal. You also have the right to appeal to the Hospital Managers.

Can I be treated against my will?

Under Section 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 can be discharged from Section 4 by:

- The doctor responsible for your care in hospital (Responsible Clinician)
- The Mental Health Act managers
- the Tribunal (but it is unlikely this will be arranged within the 72 hour period)

8. Section 5

Section 5 is used by a doctor or nurse to prevent someone leaving hospital who is a voluntary patient. It should be used only in circumstances where it is "not possible or safe to use Sections 2, 3, or 4".

Section 5(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". Section 5(2) can be used both in a psychiatric hospital and a general hospital.

Section 5(4) is the nurse's holding power. This power can only be used if you are receiving in-patient treatment for a mental disorder so that:

you are suffering from 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 section 5(2)

How long can I be detained for?

Under a section 5(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 section 5(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 5(2) or section 2, or 3 or you may continue as a voluntary patient.

What are my rights on a section 5?

If you are placed on a section 5(2) you should be given Patient Rights Leaflet Number 3 by a member of the hospital staff which explains your legal rights.

If you are placed on a section 5(4) you should be given Patient Rights Leaflet Number 13 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 section 5 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 section 5(4) or Section 5(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.

9. Further reading

Additional information can be found in the following Rethink Advice & Information Service factsheets which can be downloaded from www.mentalhealthshop.org or by contacting us directly at the details below.

- Discharge from detention under the Mental Health Act

- Advocacy
- Complaints
- Nearest relative
- Section 117 aftercare
- How to get legal advice and assistance
- The Mental Health Act 2007

There is information about Tribunals available at the Tribunals Service website:

<http://www.mhrt.org.uk>

Further information:

The **Rethink Advice & Information Service** produces a number of fact sheets on a range of different issues that affect people with mental illness. They are also able to give confidential, impartial, practical advice on all aspects of mental illness. They can be contacted at:

Rethink Advice & Information Service
15th Floor
89 Albert Embankment
London
SE1 7TP

Tel: 0845 456 0455 or 020 7840 3188, Monday to Friday 10am – 1pm

Email: advice@rethink.org

www.rethink.org

The Rethink Advice & Information Service welcomes your feedback on whether this information was helpful to you.

You can provide feedback in the following ways:

By email: Please email your feedback to us at feedback@rethink.org.

By post: You can write to us at the above address

By telephone: You can call us on 0845 456 0455 or 020 7840 3188

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