



Essex Partnership University
NHS Foundation Trust

THE MENTAL HEALTH ACT

What you need to know





The Mental Health Act – what you need to know:

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.

This leaflet covers each of the sections of the Mental Health Act as listed below:

- [Section 5\(4\)](#) - Nurses' Power to Detain a Person Being Treated For Mental Disorder as a Hospital In-Patient
- [Section 5\(2\)](#) - Detention of Patients Already In Hospital
- [Section 2](#) - Admission to Hospital for Assessment
- [Section 3](#) - Admission to Hospital for Assessment
- [Section 135](#) - Admission of Patients Removed by Police under a Court Warrant
- [Section 136](#) - Admission of Mentally Disordered Persons Found in a Public Place

As well as describing each section it also provides general information for patients and carers at the back of this leaflet.

Section 5(4) - Nurses' Power to Detain a Person Being Treated For Mental Disorder as a Hospital In-Patient

Why can't you leave the hospital?

You are being kept in hospital under Section 5(4) of the Mental Health Act 1983. This is a legal power that allows a nurse to keep you in hospital until you have been seen by the person in charge of your treatment, or their deputy. The nurse believes you have a mental disorder and are not well enough to leave.





'Deputy' means someone who can take decisions when the person in charge of your treatment is somewhere else.

How long will you be kept here?

You have to stay in this hospital for up to 6 hours or until the person in charge of your treatment or their deputy says you can leave. If you try to go, the staff can stop you, and if you leave, you can be brought back. If the person in charge of your treatment or their deputy has not seen you by this time, you will be free to leave, but if you do decide to leave, please talk to a nurse or other member of staff first.

What will happen while you are kept here?

The hospital staff will tell you about any treatment they think you need.

You have the right to refuse any treatment you do not want. Only in special circumstances, which would be explained to you, can you be given treatment you do not agree to.

What happens next?

The person in charge of your treatment, or their deputy, may decide that you need to stay in hospital for a longer time. You may decide to stay voluntarily. If you still do not want to stay in hospital, and the person in charge of your care, or their deputy, believes you are too ill to leave, they may need to keep you here under another section of the Mental Health Act. They will tell you why and how long you will be kept here, and you will be given another leaflet that explains what will happen next. If the person in charge of your treatment, or their deputy, decides that you do not need to stay, they or another member of staff will talk to you about what other help you should have.

Can you appeal?

No. Even if you do not agree that you need to stay in hospital now, you cannot appeal against a decision to keep you here under Section 5(4)





Section 5(2) - Detention of Patients Already In Hospital

Why can't you leave the hospital?

You are being kept in this hospital under Section 5(2) of the Mental Health Act 1983 because the person in charge of your treatment, or their deputy, thinks that you have a mental disorder and need to stay in hospital. 'Deputy' means someone who can take decisions when the person in charge of your treatment is somewhere else.

How long will you be here?

You can be kept here for 72 hours so that you can be seen by two doctors to decide if you need to be kept in hospital for longer.

You will probably also be seen by an approved mental health professional. An approved mental health professional is someone who has been specially trained to help decide whether people need to be kept in hospital.

You must not leave the hospital during this time unless the person in charge of your treatment, or their deputy, tells you that you may. If you try to go, the staff can stop you, and if you leave, you can be brought back.

If you were already being kept in hospital by a nurse under Section 5(4) of the Mental Health Act, then the time you have already been kept in hospital under that section counts as part of the 72 hours.

What happens next?

Once the doctors have seen you, it may be decided that you need to stay in hospital for longer.

A doctor or an approved mental health professional will tell you why and for how long this is likely to be. You will be given another leaflet to tell you what will happen. If it is decided that you do not need to stay, they (or another member of staff) will talk to you about what other help you should have.





If you have not been told you have to stay in hospital by the end of the 72 hours, you will be free to leave. But you may decide you wish to stay in hospital as a voluntary patient. If you do want to leave at the end of the 72 hours, please talk to a member of staff first.

Can you appeal?

No. Even if you do not agree that you need to stay in hospital now, you cannot appeal against a decision to keep you here under Section 5(2) .

Will you be given treatment?

The hospital staff will tell you about any treatment they think you need.

You have the right to refuse any treatment you do not want. Only in special circumstances, which would be explained to you, can you be given treatment you do not agree to.

Section 2 - Admission to Hospital for Assessment

Why are you in hospital?

You are being kept in this hospital under Section 2 of the Mental Health Act 1983. You have been examined by two doctors and they think that you have a mental disorder and you must stay in hospital so that the person in charge of your care (your responsible clinician) can find out what is wrong and how to help you.

How long will you be here?

You can be kept here for up to 28 days. During this time you must not leave unless your responsible clinician tells you that you may. If you try to leave the staff can stop you, and if you do leave you can be brought back. If you were already being kept in hospital under Section 4 of the Mental Health Act, then the time you have already been in hospital counts as part of the 28 days.





What happens next?

Your responsible clinician will tell you if they think you are well enough to leave hospital. This could be at any time during the 28 days.

Your responsible clinician may decide that you need to be in hospital for longer than 28 days, in which case you may be kept in hospital under Section 3 of the Mental Health Act instead. They must make this decision before the 28 days are up. If this happens, you will be given another leaflet that explains what it means.

What treatment will you be given?

Your responsible clinician and other members of staff will talk to you about any treatment they think you need. In most cases you will have to accept their advice.

There are different rules for some special treatments, like electro-convulsive therapy (ECT). If the staff think you need one of these special treatments, the rules will be explained to you and you will be given another leaflet.

Can you appeal?

Yes, you can appeal against the decision to keep you in hospital under Section 2. To do this, you can ask the Hospital Managers to let you leave. You can do this at any time. The Hospital Managers are a special committee of people set up within the hospital to decide whether people should be kept in hospital. They may want to talk to you before deciding whether to let you leave.

You can write to the Hospital Managers at:

Mental Health Act Office
Brockfield House – Kemble Way
Wickford
SS11 7FE

Or you can ask a member of staff to help you contact the Hospital Managers.





Your nearest relative can also write to the Hospital Managers to say that they want you to be allowed to leave hospital. This leaflet explains further down who your nearest relative is. If your nearest relative does this, the Hospital Managers must let you leave within 72 hours unless your responsible clinician tells them you might be a danger to yourself or other people if you are allowed to leave. If this happens, it will be another 6 months before your nearest relative

will be able to tell the Hospital Managers again that they want you to leave, if you are still being kept in hospital then.

You can also ask a Tribunal to say you should no longer be kept in hospital. You can only do this during the first 14 days of the 28 days you can be kept in hospital.

What is a Tribunal and what happens?

The Tribunal is an independent panel which can decide whether you should be allowed to leave the hospital. It will hold a meeting with you and with staff from the hospital who know you. This meeting is called a 'hearing'. You can ask someone else to come to the hearing to help you, if you want. Before the hearing, the members of the Tribunal will read reports from the hospital about you and your care. One of the members of the Tribunal will also come to talk to you.

If you want to apply to the Tribunal they can be contacted via their website: mhrtenquiries@hmcts.gsi.gov.uk or you can telephone them on **0300 123 2201**

You can ask a solicitor to write to the Tribunal for you and help you at the hearing. The hospital and the Law Society have a list of solicitors who specialise in this. You will not have to pay for help from a solicitor with this. It is free of charge under the Legal Aid scheme.





Section 3 - Admission to Hospital for Assessment

Why are you in hospital?

You are being kept in this hospital under Section 3 of the Mental Health Act 1983. This means that two doctors think that you have a mental disorder and you need to be in hospital so that you can be given treatment and care.

How long will you be here?

You can be kept here for up to 6 months at first so that you can be given the treatment you need.

You must not leave during this time unless the person in charge of your care (your responsible clinician) tells you that you may. If you try to leave, the staff can stop you, and if you do leave, you can be brought back.

What happens next?

Your responsible clinician will tell you when they think you are well enough to leave hospital. If your responsible clinician thinks that you need to stay in hospital for longer than 6 months, they can renew how long you can be kept in hospital for up to another 6 months, and then for up to a year at a time. Your responsible clinician will talk to you about this towards the end of each period.

What treatment will you be given?

Your responsible clinician and other members of staff will talk to you about any treatment they think you need. In most cases you will have to accept their advice.

After three months, there are special rules about any medicine or drugs you are being given for your mental disorder. If you do not want the medicine or drugs, or are too ill to say whether you want them, a doctor who is not from this hospital will visit you. This independent doctor will talk to you and to staff at the hospital who know you. The independent doctor will decide what medicine and drugs you can be given. Unless it is an emergency, these are the only medicine and drugs you can be given without your agreement.





This independent doctor is called a SOAD (Second Opinion Appointed Doctor) and is appointed by an independent Commission which monitors how the Mental Health Act is used.

There are different rules for some special treatments, like electro-convulsive therapy (ECT). If the staff think you need one of these special treatments, the rules will be explained to you and you will be given another leaflet.

Can you appeal?

Yes, you can appeal against a decision to keep you in hospital under Section 3.

To do this, you can ask the Hospital Managers to let you leave. You can do this at any time. The Hospital Managers are a special committee of people set up within the hospital to decide whether people should be kept in hospital. They may want to talk to you before deciding whether to let you leave.

You can write to the Hospital Managers at:

Mental Health Act Office
Brockfield House – Kemble Way
Wickford
SS11 7FE

Or you can ask a member of staff to help you contact the Hospital Managers. Your nearest relative can also write to the Hospital Managers to say that they want you to be allowed to leave hospital. This leaflet explains further down who your nearest relative is. If your nearest relative does this, the Hospital Managers must let you leave within 72 hours unless your responsible clinician tells them you might be a danger to yourself or other people if you are allowed to leave. If this happens, it will be another 6 months before your nearest relative will be able to tell the Hospital Managers again that they want you to leave, if you are still being kept in hospital then. You can also ask a Tribunal to say you should no longer be kept in hospital.





What is a Tribunal and what happens?

The Tribunal is an independent panel which can decide whether you should be allowed to leave the hospital. It will hold a meeting with you and with staff from the hospital who know you. This meeting is called a 'hearing'. You can ask someone else to come to the hearing to help you, if you want. Before the hearing, the members of the Tribunal will read reports from the hospital about you and your care. One of the members of the Tribunal will also come to talk to you.

When can I apply to the Tribunal?

You can apply to the Tribunal once at any time in the first 6 months you are kept in hospital under Section 3. You may then apply once at any time during the second 6 months, and then once during every year that you are kept in hospital after that.

If your nearest relative told the Hospital Managers that they wanted you to be allowed to leave hospital, but your responsible clinician said you were not allowed to leave, your nearest relative can also apply to the Tribunal. Your nearest relative must do this within 28 days of being told that your responsible clinician did not think you should be allowed to leave hospital.

If you want to apply to the Tribunal they can be contacted via their website: mhrtenquiries@hmcts.gsi.gov.uk or you can telephone them on **0300 123 2201**.

You can ask a solicitor to write to the Tribunal for you and help you at the hearing. The hospital and the Law Society have a list of solicitors who specialise in this. You will not have to pay for help from a solicitor with this. It is free of charge under the Legal Aid scheme.





Section 135 - Admission of Patients Removed by Police under a Court Warrant

Why are you in hospital?

If you have been brought to hospital under Section 135 of the Mental Health Act, it is because an approved mental health professional thinks that you have a mental disorder and you may need treatment or care.

An approved mental health professional is someone who has been specially trained to help decide whether people need to be in hospital.

A magistrate has issued a warrant saying that you can be brought here and kept here even if you do not want to come.

How long will you be here?

You can be kept here (or in another in a place where you will be safe) for 72 hours so that you can be seen by a doctor and an approved mental health professional. If these people agree that you need to remain in hospital, a second doctor may be asked to see you, to confirm their decision.

During this time you must not leave unless you are told that you may. If you try to go, the staff can stop you, and if you leave you can be brought back.

If the doctors and the approved mental health professional have not seen you by the end of the 72 hours, you will be free to leave. You may decide to stay on as a voluntary patient. But if you do want to leave, please talk to a member of staff first.

What happens next?

When the doctors and an approved mental health professional have seen you, they may say that you need to stay in hospital for longer. They will tell you why and for how long this is likely to be. You will be given another leaflet that explains what will happen. If they decide that you do not have to stay, someone will talk to you about what other help you should have.





Can you appeal?

No. Even if you do not agree that you need to stay in hospital now, you cannot appeal against a decision to keep you here under Section 135 .

Will you be given treatment?

The hospital staff will tell you about any treatment they think you need.

You have the right to refuse any treatment you do not want. Only in special circumstances, which would be explained to you, can you be given treatment you do not agree to.

Section 136 – Admission of Mentally Disordered Persons Found in a Public Place

Why are you in hospital?

You have been brought to this hospital by a police officer because they are concerned that you may have a mental disorder and should be seen by a mental health professional.

You are being kept here under Section 136 of the Mental Health Act 1983 so that you can be assessed to see if you need treatment.

How long will you be here?

You can be kept here (or in another place where you will be safe) for up to 72 hours so that you can be seen by a doctor and an approved mental health professional.

An approved mental health professional is someone who has been specially trained to help decide whether people need to be kept in hospital. If the doctor and the approved mental health professional agree that you need to remain in hospital, a second doctor may be asked to see you to confirm their decision.

During this time you must not leave unless you are told that you may. If you try to go, the staff can stop you, and if you leave you can be brought back. If the doctors and the approved mental health professional have not seen you by the end of the 72 hours, you will be free to leave. You may decide to stay on as a voluntary patient. But if you do want to leave, please talk to a member of staff first.





What happens next?

When the doctors and an approved mental health professional have seen you, they may say that you need to stay in hospital for longer. They will tell you why and for how long this is likely to be. You will be given another leaflet that explains what will happen. If they decide that you do not have to stay, someone will talk to you about what other help you should have.

Can you appeal?

No. Even if you do not agree that you need to be in hospital, you cannot appeal against the decision to keep you here under Section 136.

Will you be given treatment?

The hospital staff will tell you about any treatment they think you need.

You have the right to refuse any treatment you do not want. Only in special circumstances, which would be explained to you, can you be given treatment you do not agree to.

General Information for patients, carers and relatives

Letting your nearest relative know

There is a list of people in the Mental Health Act who are treated as your relatives. Normally, the person who comes highest in that list is your nearest relative. The hospital staff can give you a leaflet which explains this and what rights your nearest relative has in connection with your care and treatment.

Changing your nearest relative

If you do not think this person is suitable to be your nearest relative, you can apply to the County Court for someone else to be treated as your nearest relative instead. The hospital staff can give you a leaflet that explains this.





Keeping in Touch

All letters sent to you while you are in hospital will be given to you. You can send letters to anyone except someone who has said they do not want to get letters from you. Letters to these people can be stopped by the hospital staff.

Help from an independent mental health advocate

As a patient you are entitled to help from an independent mental health advocate if you want it.

These advocates are independent of people involved in your care. They can help you get information about your care and treatment, why you are being kept in hospital, what it means and what your rights are. They can come and see you and help you understand what you are told by people involved in your care and treatment. If you want, they can help you talk to these people or they can talk to them for you. They can also help you with the tribunal.

You can contact the independent mental health advocacy service yourself. There should be a telephone where you can contact the advocacy service and talk to them in private. You can ask a member of staff where this telephone is.

The telephone numbers for local advocacy services:

Thurrock Mind - 01375 391411

Basildon Mind - 01268 284130

South Essex Advocacy Services - 01702 340566

Pohwer Advocacy – 0300 456 2370

Code of Practice

There is a Code of Practice that gives advice to the staff in the hospital about the Mental Health Act and treating people for mental disorder. The staff have to consider what the Code says when they take decisions about your care. You can ask to see a copy of the Code, if you want.





How do you complain?

If you want to complain about anything to do with your care and treatment in hospital, please speak to a member of staff. They may be able to sort the matter out. They can also give you information about the hospital's complaints procedure, which you can use to try to sort out your complaint locally. They can also tell you about any other people who can help you make a complaint, for example an independent mental health advocate (see above).

If you do not feel that the hospital complaints procedure can help you, you can complain to an independent Commission. This is called the Care Quality Commission and it monitors how the Mental Health Act is used, to make sure it is used correctly and that patients are cared for properly while they are in hospital. The hospital staff can give you a leaflet explaining how to contact the Commission.

If you want to apply to the Tribunal they can be contacted via their website mhrtenquiries@hmcts.gsi.gov.uk, or you can telephone them on **0300 123 2201**





iWantGreatCare
Transforming Healthcare



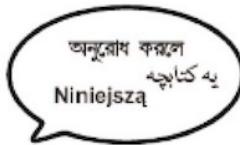
Did you receive great care today? Leave your ratings and review to let us know how we did.
Google search: EPUT iwantgreatcare



Patient Advice and Liaison Service (PALS)

If you have any concerns or need advice about accessing NHS services, you can speak in confidence to the Patient Advice and Liaison Service on **0800 085 7935** or you can email epunft.pals@nhs.net

This leaflet can be produced in large print, CD, Braille and other languages on request.



Essex Partnership University NHS Foundation Trust regards equality and diversity as integral to the way it works. Our staff will ensure that everyone is treated fairly and no one is discriminated against on the basis of their ethnicity, gender, disability, age, sexual orientation and religion or belief.

© Essex Partnership University NHS Foundation Trust.
Reproduced with permission.

Production date August 2024

EP0083

