



## Section 37 of the Mental Health Act 1983

Section 37 (s37) is a way of diverting people who appear before either the Magistrates or Crown Courts into a psychiatric hospital, if the Court feels they need it.

### How does it actually work

If someone appears before a Court either convicted of or charged with an offence for which they could be sent to prison, and it appears to the Judge or Magistrates that the person has a mental disorder which needs either further assessment or treatment in hospital, then a s37 order can be made. In making the order, the Court has to be satisfied that it is the most suitable sentence available. S37 can only be used if doing so is in the interests of either the detained person's health or safety, or the safety of other people.

Whilst there usually is, it is not necessary for there to be a link between the offence and the mental illness or mental disorder.

Whilst s37 is most commonly used after someone with an apparent mental illness or mental disorder has been found guilty of an offence, it can, in certain circumstances, be used on someone who has not been convicted.

If someone appears before a Court charged with an offence for which they could be imprisoned, but there is psychiatric evidence that the person is so unwell that they are unfit to plead, then s37 can be used to send that person to a psychiatric hospital for treatment. This can only take place when the Court decides the person carried out the act they have been charged with, even if, because of their illness, they were incapable of forming the necessary intent.

### What evidence does the Court need

For s37 to be used, two doctors must give evidence to the Court saying that the person is mentally unwell or mentally disordered and needs treatment in hospital. If the Court feels that the person poses an extremely high risk to the public, because of the severity of the offences which they have been found to have carried out, then the Court could use section 37/41 of the Mental Health Act instead. The effect of this is to add more restrictions onto the hospital order, including the need for Ministry of Justice approval for leave.

There is provision for someone sentenced under s37 to be held temporarily in prison for up to 28 days whilst an appropriate hospital bed becomes available. Some prisons have healthcare departments where mentally unwell and mentally disordered prisoners can be treated. As hospitals have different levels of security, it is up to the Court to assess the lowest level of security that the person needs, which in turn governs where they are sent.

### How long does it last

It is for up to six months at first, but the Responsible Clinician (RC) can renew the s37 for another six months and for further periods of one year after that. The RC will continue to renew the s37 if they feel it is necessary for the patient to remain in hospital to receive care and treatment. This can happen for as long as the patient meets the criteria set out in the Mental Health Act. Unlike most prison sentences, a s37 does not come to an end after a period of time.





## Patient Rights

A number of s37 patients feel that the Court should not have given them a hospital order. It is possible to appeal this sentence in the same way as any other. If the sentence took place in the Magistrates' Court, the appeal is to the Crown Court. If the sentence happened in the Crown Court, then appeal would be to the Court of Appeal. Any person convicted has the right to lodge an appeal against their sentence within 21 days of their sentencing in Magistrates' Court cases, or 28 days in Crown Court cases.

It is, though, extremely important to get legal advice before appealing. A failed appeal could have considerable negative implications. The solicitor who dealt with the patient's criminal case can advise on whether there are any merits to such an appeal.

Someone detained in hospital under s37 can challenge their detention in other ways. A s37 patient can appeal to a Hospital Managers panel at virtually any time. They have the right to appeal to a Mental Health Tribunal once in the second 6 months of being in hospital, and then once a year after that. Every psychiatric hospital is required to keep a list of, Law Society accredited, mental health solicitors who are qualified to advise and represent patients and will travel to the hospital. People detained in hospital under the Mental Health Act are entitled to free legal representation at Tribunals through Legal Aid.

Additionally, if a patient is unhappy about an aspect of their treatment while in hospital, they can speak to their named nurse or an Independent Mental Health Advocate (IMHA), who can help them further. The hospital are required to display details of the local IMHA service on their wards.

## How can someone be discharged

The Responsible Clinician can discharge at any time, but will only do this if they are sure the patient no longer requires treatment in hospital. It is not uncommon for the RC to think the patient may need to be recalled into hospital if their mental state deteriorates. For this reason, a Supervised Community Treatment Order may be put in place. A CTO allows a patient to live in the community, provided they stick to certain conditions, such as taking medication or making attending appointments.

If the mental health of a CTO patient starts to deteriorate, they can be recalled into hospital for an assessment of up to 72 hours. If it is felt that a longer period of hospital treatment is needed, the CTO can be revoked and the patient detained under their original section. The patient can be recalled if they have failed to keep to one of their conditions, such as the condition to take medication. The section can only be revoked however if the patient's mental health has deteriorated to the point when this is necessary.

The person can be discharged by the Hospital Managers. This is usually a short, informal hearing to consider the person's case.

The person can be discharged by a First-tier Tribunal (Mental Health) either immediately or on a set date. The Tribunal is a more in-depth review of the person's case carried out by an independent body consisting of a lawyer, psychiatrist and a representative of the public. Application to a Tribunal can only be made after 6 months detention and then after each annual renewal. However, if the 6 months run out and the order is not renewed by the doctor, the section expires and the person is no longer detained.

